# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1957

## No. 100

GILBERT GREEN AND HENRY WINSTON,
PETITIONERS,

*vs.*

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 9, 1957
CERTIORARI GRANTED MAY 27, 1957

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[fol. A] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, Petitioner,

v.

GILBERT GREEN, Respondent.

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ORDER TO SHOW CAUSE—Filed February 28, 1956

Upon the annexed affidavit of PAUL W. WILLIAMS, United States Attorney for the Southern District of New York, it is

ORDERED that the above-named Gilbert Green show cause at a term of this Court, to be held on March 12, 1956, at 10:30 A.M., in Room 318, United States Court House, Foley Square, Borough of Manhattan, City, County and State of New York, or as soon thereafter as counsel can be heard, why the said Gilbert Green should not be adjudged and held in criminal contempt of this Court by reason of the fact that he knowingly and deliberately disobeyed and resisted a lawful order and command of this Court directing him to appear before it on July 2, 1951 and July 3, 1951, requiring him to surrender himself in execution of the judgment and sentence imposed under Indictment C 128-87 upon such day as the District Court may direct.

Sufficient cause therefor appearing, let the service of a copy of this order upon the respondent, on or before February 28, 1956, be deemed sufficient.

Dated: New York, N. Y., February 27, 1956.

John W. Clancy, U.S.D.J.

[fol. B] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF PAUL W. WILLIAMS

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK, *ss.*:

PAUL W. WILLIAMS, being duly sworn, deposes and says:

I am United States Attorney for the Southern District of New York and am in charge of the above entitled proceeding and familiar with all facts and prior proceedings herein.

This affidavit is submitted in support of an order directing respondent to show cause why he should not be cited and punished for criminal contempt of Court by reason of his knowing and deliberate disobedience and resistance to a lawful order and command of the United States District Court for the Southern District of New York.

Green and ten others were convicted of conspiracy to teach and advocate the overthrow of the Government of the United States by force and violence in violation of the Smith Act, Sections 11 and 13, Title 18, United States Code (1946 Ed.). Judgment of conviction and sentence was entered in October, 1949, sentencing respondent to a term of five years imprisonment and a fine of $10,000.

[fol. C] On November 9, 1949, respondent Green was admitted to bail in the sum of $20,000, pending appeal from the aforesaid conviction, by order of the United States Court of Appeals for the Second Circuit, dated November 2, 1949. Respondent's admission to bail was conditioned on his agreement to "surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of the United States for the Southern District of New York may direct . . .", and not to "depart the jurisdiction of the District Court for the Southern District of New York without leave. . . .".

On June 4, 1951, the Supreme Court of the United States affirmed the judgment of conviction and sentence (341 U. S. 494). On June 22, 1951, Mr. Justice Jackson, Circuit Jus-

tice for the Second Circuit, denied an application to stay the mandate of the Supreme Court.

On or about June 28, 1951, a proposed order on mandate, requiring the surrender of Green and his co-defendants on July 2, 1951, was served on counsel, and Green and his co-defendants were notified to be present on July 2, 1951 for said purpose.

On said July 2, 1951, respondent failed to appear before this Court. On that date, Honorable Sylvester J. Ryan of this Court signed an order requiring the surrender of respondent Green on July 2, 1951, at 11:05 A.M. Respondent did not surrender at the time fixed or at any other time. On July 2, 1951, a bench warrant for Green's arrest was ordered by Judge Ryan and the proceeding adjourned until July 3, 1951. On this date, Green again failed to appear before the Court.

[fol. C] On information and belief, the United States Marshal for the Southern District of New York was unable to execute the warrant of arrest prior to February 27, 1956.

On February 27, 1956, respondent Green surrendered himself for commitment at the United States Court House Foley Square, New York, New York.

Upon information and belief, respondent Green well knew of the outstanding order and decree of this Court and was in wilful and deliberate disobedience and resistance to said lawful order and decree of this Court referred to herein and was, therefore, in criminal contempt of this Court and its authority.

The conduct of Green in defying and flaunting the lawful order of this Court directing his surrender is an open affront to the dignity of the Court. He had been accorded every right of review to test the validity of his conviction. After the Supreme Court had ruled his conviction valid, respondent then flouted the judicial process by his deliberate and continued defiance of a known order of this Court.

The affront to the dignity of this Court should not go unpunished, and this proceeding is initiated in accordance with the mandate of Section 401(3), Title 18, United States Code, which gives this Court full power to punish such criminally contemptuous conduct.

WHEREFORE, it is respectfully prayed that this Court enter an order requiring the respondent, Gilbert Green, to appear in this Court on a day certain and show cause [fol. D] why he should not be held in and adjudged guilty of criminal contempt of this Court for his disobedience and resistance to its lawful order, decree and command, and after said hearing, that he be punished for such contumacious conduct.

Paul W. Williams, United States Attorney for the Southern District of New York.

Sworn to before me this 27th day of February, 1956.

Jack W. Ballen, Notary Public, State of New York, No. 24-0146400, Qualified in Kings Co., Cert. Filed in New York Co., Commission Expires March 30, 1957.

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[fol. E] UNITED STATES MARSHAL'S RETURN

(omitted in printing).

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[fol. F] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

SPECIFICATIONS OF CRIMINAL CONTEMPT GREEN CASE—
Filed March 6, 1956

This proceeding having been instituted by an order to show cause dated February 27, 1956, based upon an affidavit of Paul W. Williams, United States Attorney for the Southern District of New York, sworn to on February 27, 1956, and heretofore served on the contemnor on February 28, 1956,

The United States of America, for its specifications of criminal contempt, alleges that the contemnor, Gilbert Green, has committed criminal contempt of this Court by wilfully and knowingly disobeying and resisting the following order, decree and command of this Court:

Order of Hon. Sylvester J. Ryan, United States District Judge, dated July 2, 1951.

The United States of America further alleges that said contemnor, Gilbert Green, committed criminal contempt of this Court by reason of the following:

The contemnor disobeyed the said order of said Judge Ryan by failing to appear before this Court on July 2, 1951, by failing to surrender to the United States Marshal [fol. G] for the Southern District of New York on said date, or at any time prior to his surrender at the United States Court House on February 27, 1956.

A true and accurate copy of the said order of Judge Ryan is attached hereto and incorporated herein as if fully set forth.

Dated: New York, New York, March 6, 1956.

Yours, etc.,

Paul W. Williams, United States Attorney for the Southern District of New York, Office and Post Office Address: United States Court House, Foley Square, New York 7, New York.

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[fol. 1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C. 149-268

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UNITED STATES OF AMERICA,

v.

GILBERT GREEN.

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**Excerpts from Stenographer's Minutes in Green Case**

Before:

Hon. Archie O. Dawson, District Judge.

New York, March 12, 1956, 10:30 o'clock a.m.

APPEARANCES:

Paul W. Williams, Esq., United States Attorney, and Thomas A. Bolan, Esq., Assistant United States Attorney; for the Government;

John J. Abt, Esq., Attorney for the Defendant.
[fol. 2]

* * * * * * *

The Court: You have a motion to make?

MOTION TO VACATE SHOW CAUSE ORDER AND DENIAL THEREOF

Mr. Abt: Yes; your Honor, at this time I move to vacate the show cause order and to dismiss the proceeding on the following ground: the charge here is that the respondent is in disobedience of an order of this court requiring him to surrender for commitment and to serve the sentence [fol. 3] imposed on him in United States vs. Dennis. It is our position, your Honor, that a Federal Court lacks jurisdiction to sentence in contempt for failure to surrender for commitment.

* * * * * * *

[fol. 6]

* * * * * * *

The Court: Your motion is denied. All of the points you made were urged in the case of United States of America v. Gus Hall, and passed upon by the Court of Appeals of this circuit. I think it is 189 Fed. (2d) at 726, certiorari was denied by the United States Supreme Court, 345 U.S. 906, and as to the suggestion that all that happened to a person who does submit to sentence following conviction, I think the point made by Judge Ryan in all the cases is a good one, but a rule that would permit that to be done would be simply a matter of convenience for a person who had means and a matter of indifference where bail had been posted by others. The power of the court to sentence for contempt under the circumstances shown in the specifications here has been determined by the court. Therefore it is a question of fact as to whether [fol. 7] these specifications are sustained.

* * * * * * *

[fol. 11] OFFERS IN EVIDENCE

Mr. Williams: I offer a certified copy of judgment of conviction and sentence, dated October 21, 1949, sentencing Green to five years imprisonment and $10,000 fine.

The Court: Any objection?

Mr. Abt: No objection.

(Marked Government's Exhibit 1 in evidence.)

Mr. Williams: I offer a certified copy of the order of the Court of Appeals, granting bail November 2, 1949.

Mr. Abt: No objection.

(Marked Government's Exhibit 2 in evidence.)

Mr. Williams: Your Honor doesn't wish me to read any parts of these?

The Court: No, no.

Mr. Williams: I offer a certified copy of the bail bond recognizance, dated November 3, 1949.

Mr. Abt: No objection.

(Marked Government's Exhibit 3 in evidence.)

Mr. Williams: If you wish to see any of these, Mr. Abt, I will pass them to you first.

I offer a certified copy of the order and affidavit of Judge Bondy, dated November 10, 1949, extending the bail limits:

[fol. 12] Mr. Abt: No objection.

(Marked Government's Exhibit 4 in evidence.)

Mr. Williams: I offer this certified copy of the order of Judge Ryan, directing the surrender of Mr. Green on July 2, 1951.

Mr. Abt: May I see that just a moment? No objection.

(Marked Government's Exhibit 5 in evidence.)

Mr. Williams: I offer a certified copy of the bench warrant for the arrest of Green dated July 2, 1951.

Mr. Abt: No objection.

(Marked Government's Exhibit 6 in evidence.)

Mr. Williams: Now I ask the Court to take judicial notice of three facts:

One, decision of Mr. Justice Jackson of the Supreme Court of the United States, continuing bail pending appeal after affirmance of conviction by the Court of Appeals. This is in 184 Fed. (2d) 280.

Second, a decision of the Supreme Court of June 4, 1951, affirming a judgment of conviction which appears in 341 U. S. 494.

And third, the decision of Mr. Justice Jackson of June 22, 1951, denying a stay of the mandate, appearing in 117 [fol. 13] Fed. Supp. 685.

Now, if your Honor please, I subpoenaed Mr. Sacher and al[illegible] Mr. Isserman, but to avoid calling them counsel has agreed that I may read into the record the record of what transpired before Judge Ryan on July 3, 1951, because that was the only purpose of my subpoenaing these gentlemen.

Mr. Abt: It is quite all right, Mr. Williams.

The Court: Can't that be taken in lieu of the evidence with the same force and effect as if they appeared here today and testified?

Mr. Abt: Yes, I stipulated that had they appeared they would so testify, your Honor.

The Court: And there will be no further cross examination than appears in the record.

Mr. Abt: Yes.

The Court: All right.

Mr. Williams: On page 89 of the transcript of the record which I have before me, in United States of America v. Eugene Dennis, et al., C-128-87—this is before Judge Ryan——

"Now, you did make a statement"——

The Court: This is Mr. Sacher?

Mr. Williams: This is the Court speaking to Mr. Sacher. [fol. 14] The Court: All right. That is Harry, or which Sacher?

Mr. Williams: Harry.

The Court: Harry Sacher.

Mr. Williams: Sacher.

"Now, you did make a statement last week that you will have the four defendants in court, as I recall, on Monday.

"Mr. Sacher: I said that all of them would be here.
"The Court: I assume by 'all,' you meant the eleven.
"Mr. Sacher: Yes, your Honor, I did.
"The Court: Including these four."

Now we have to identify "these four", parenthetically: Hall, Thompson, Green and Winston.

Mr. Abt: I so stipulate, your Honor, that those are the four referred to.

The Court: All right.

Mr. Williams: "Mr. Sacher: That's right.

"The Court: And as you know, four of them were not here on Monday. Of course, you may be bound by some obligation of attorney and client, but are you able to give [fol. 15] the Court any information as to their present whereabouts?

"Mr. Sacher: Your Honor, I should consider myself not bound by any obligation to withhold any information that I might have, and I give your Honor my assurance that I have no knowledge, I have no basis of knowledge as to their present whereabouts or where they might have gone.

"The Court: Where did you last see these four defendants?

"Mr. Sacher: I have a definite recollection of having seen Hall and Winston and maybe Green—who is the fourth?

"Mr. Cohn: Thompson.

"The Court: Thompson.

"Mr. Sacher: —Thompson. I am not certain about Thompson, but I am fairly certain that I saw the three I mentioned sometime on Friday at 35 East Twelfth Street.

"The Court: Did you tell them at that time that their presence was required in court yesterday morning?

"Mr. Sacher: Definitely. As a matter of fact I advised that because I think I saw them among other defendants after I had been here on Friday, your Honor, and had made [fol. 16] these motions, and therefore I advised that they all should be present and I was assured they would be.

"The Court: By them?

"Mr. Sacher: Yes, by all of the defendants.

"The Court: That is, that all defendants would be here.

"Mr. Sacher: That's right.

"The Court: But you don't know where they are?

"Mr. Sacher: Really don't.

"The Court: And you personally told them to be here Monday and they assured you that they would be here, with the exception of the one defendant, Green?

"Mr. Sacher: No, Thompson.

"The Court: Thompson.

"Mr. Sacher: I didn't see Thompson on Friday. That is my best recollection, that I didn't see him. I may have."

Now I will turn to Mr. Isserman's testimony. This is on page 91, following immediately the testimony that I have just read or the statements that I have just read:

"The Court: Mr. Isserman, do you know where any of these defendants are?

"Mr. Isserman: I might say to the Court that I would [fol. 17] not rest on privilege in this situation at all. I have no knowledge of the present whereabouts of any of these defendants. I was with Mr. Sacher on Friday when there was some discussion of the illegality or the alleged illegality of the notices that were served, and I recall Mr. Sacher saying that notwithstanding that, he would recommend strongly that all defendants be present on Monday morning, and such assurance was given. I remember, Green being my client, I remember distinctly that I saw him on that day and received from him the assurance that he would be here Monday morning."

Now I skip to page 96. This is Mr. Sacher speaking to the Court.

The Court: On what day is this?

Mr. Williams: July 3rd, 1951, the day following Judge Ryan's order:

"The Court realizes, of course, that the only basis on which I could make my statement or promise"——

I am sorry, this is Mr. Sacher speaking to the Court.

"The Court realizes, of course, that the only basis on which I could make my statement or promise to the Court was the promise of my clients and the others to appear. I don't seek any refuge here beyond the fact that I was [fol. 18] attorney only for three, for the fact is that many

more than three spoke to me this past week and that all said they would be here.

"So confident was I in the belief that they would all be here, that when I spoke to Mr. Saypol, and when we came downtown before your Honor last week, all I asked him for, as he correctly says, was to allow these men to spend the last holiday, which would be available to them for some years, to being with their wives and children, and he may consider it ironical, but I suggested to him that it would be ironical for the United States Attorney to decline that kind of a last wish, so to speak, on the eve of Independence Day.

"When he suggested that we come before your Honor, I had, frankly, as your Honor will recall, it was my impression that this was a matter that would be discussed in chambers and that it would be disposed of that way, and your Honor said that you didn't consider such matters in chambers, and I, of course, deferred, as I was required to, to your Honor's wish."

Mr. Abt: Have you finished your reading?

Mr. Williams: Yes, I have finished.

### Colloquy Between Court and Counsel

Mr. Abt: If your Honor please, while I stipulated the fact of these statements, I should like the record to show [fol. 19] my objection as to their relevancy and materiality.

The Court: You will admit that the witness, if he were called, would testify and that would be the extent of his testimony.

Mr. Abt: That is correct, and I reserve my objection as to the relevance and materiality of that testimony.

The Court: The objection is overruled.

Mr. Williams: The Government would like to call to the witness stand, Mr. David Sweeney, the Clerk of this Court.

Mr. Abt: If Mr. Williams wants to prove by Mr. Sweeney that Mr. Green did not appear on July 2nd or July 3rd, I will be happy to stipulate that.

Mr. Williams: May I read what I propose to elicit from Mr. Sweeney, and if it is agreeable to you he will be considered to have testified to that effect.

The Court: All right.

Mr. Williams: Mr. David Sweeney, if called, would testify as follows:

"I am a deputy clerk in the office of the Clerk of the United States District Court for the Southern District of New York, and have been so employed for the past twenty-five years.

[fol. 20] "On July 2nd and July 3rd, 1951, I was assigned to the Criminal Calendar part in Room 318, United States Court House. On the calendar for July 2nd, 1951, there appeared the names of eleven defendants under indictment No. C-128-87, for surrender. Included among those named was the name of Gilbert Green.

"When the matter was reached in the calendar call, I called out the names of the eleven defendants and when I called Gilbert Green there was no response. Mr. Green did not appear for surrender on July 2nd and the Court issued a bench warrant for his arrest and adjourned the proceedings until July 3, 1951.

"On July 3, 1951, the matter of Gilbert Green appeared on the criminal calendar for surrender. Again Green did not appear in answer to the calendar call. On that date Judge Ryan declared Green's bail forfeited."

The Court: Will you stipulate——

Mr. Abt: I will stipulate beyond the fact that Mr. Sweeney would so testify, your Honor. I stipulate that what Mr. Williams has just read are the facts.

The Court: All right.

Mr. Williams: Thank you.

I would like to call Mr. Thomas M. Farley, Chief Deputy United States Marshal.

[fol. 21] Mr. Abt: We can do the same thing again, your Honor. I assume Mr. Williams wants to show——

Mr. Williams: They looked for him and were unable to find him.

Mr. Abt: Were unable to serve the bench warrant.

Mr. Williams: May I read what the testimony will be?

Mr. Abt: I will stipulate that the marshal made diligent effort to serve the bench warrant and was unable to serve it.

The Court: Do you want anything more than that in the record? Do you want where they looked for him?

Mr. Williams: They looked for him and couldn't find him; made diligent efforts to find him and he was not available anywhere.

Mr. Abt: They couldn't——

The Court: Where did they look for him?

Mr. Williams: At his home, 45-18 42nd Street, Long Island City, New York. He was accompanied by two other marshals.

Mr. Abt: That wasn't his home, Mr. Williams. His home is in Chicago.

Mr. Williams: Yes, that is right, his home is in Chicago. [fol. 22] The Court: That is where they looked for him. All right, is it stipulated that that is the fact?

Mr. Abt: It is stipulated that is the fact, your Honor.

The Court: All right, the marshal looked for him at that address.

Mr. Williams: I would like a stipulation that that was the address he gave in the bail bond.

Mr. Abt: I will so stipulate.

Mr. Williams: All right. Thank you.

The Court: All right.

Mr. Williams: Now I am prepared, your Honor, to call the photographer, and I would like to show this film. Robert E. Daly.

Mr. Abt: I would like to inquire, your Honor, as to the relevance, if I may, of this performance we are about to have. I, of course, am prepared to stipulate, as the order to show cause alleges, that Mr. Green surrendered at the court house here in Foley Square on, I believe, the 27th of February, this year.

I don't think we have to have that proved by a moving picture.

The Court: There is the issue, I take it, as to whether he had knowledge of the fact of the order requiring him [fol. 23] to surrender previous to that date.

Is that the issue you are making?

Mr. Abt: That is an issue, yes, your Honor, but a picture showing him mounting the steps of Foley Square is not going to do anything more than I am prepared to stipulate right now.

Mr. Williams: Your Honor, it is not only what you see on the screen, but it is what is said contemporaneously with these acts, and clearly, in his own words and by his own admissions, he indicates that he was a fugitive, that he knew he was a fugitive, and he was returning.

Mr. Abt: May I suggest this, Mr. Williams: do you have a transcript of what Mr. Green said at Foley Square?

Mr. Williams: What is the objection to seeing this film?

The Court: I will take the evidence. There is an issue as to whether he was intentionally remaining a fugitive from justice. I will take any evidence that has any relevance, so you may proceed, Mr. Williams.

Mr. Abt: May I ask one question, your Honor? How do we get all this in the record?

Mr. Williams: Your Honor, we have prepared all of that. [fol. 24] The Court: If there is some film going to be offered, it will be marked in evidence.

Mr. Williams: Now I will let Mr. Bolan call—what is the name of the photographer—Mr. Robert E. Daly. Will you examine him now:

The Court: Mr. Daly.

Mr. Abt: Again I think we can save time, your Honor. I am not objecting to the authenticity of the picture.

The Court: We will swear this witness, anyway, and it will only take a minute.

---

ROBERT E. DALY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Abt: Again, may I suggest, Mr. Bolan, if you will tell me what you want to prove, which I assume is to——

The Court: Let's ask him. He can do this in about three questions. It will save time.

Direct examination.

By Mr. Bolan:

Q. What is your occupation, Mr. Daly?
A. Motion picture camera man.

Q. How long have you been employed in that occupation?
[fol. 25] A. Twenty-two years.
Q. Do you know the defendant Gilbert Green? Have you ever seen him?
A. I do not.
Q. Well, did you see him?
A. I only saw him the day that I made the pictures.
Q. And do you recall what day that was?
A. I believe it was September—February 27th it was.

The Court: Of this year?
The Witness: Of this year.

Q. And on that day did you take some motion pictures of Mr. Green?
A. Yes, I took newsreel shots of him surrendering on the courthouse steps.
Q. Do you have with you the film that you took on that day?
A. Yes.

Mr. Williams: I offer it in evidence.
The Court: Mark it for identification.
Mr. Williams: Mark it for identification.

(Marked Government's Exhibit 7 for identification.)

Mr. Bolan: Your Honor, I now request permission to exhibit this film.
The Court: Go ahead.

* * * * * * *

[fol. 26]

* * * * * * *

(A motion picture was then projected on the screen and [fol. 27] the following dialogue recorded:)

DIALOGUE OF RECORDED FILM

"Q. Mr. Green, can you tell us why you decided to give yourself up?
"A. Because I think the political climate in the country is changing. I think there is a good chance now of winning the fight to defend the Bill of Rights and the Constitution and to preserve world peace.

"Q. Isn't it true that even though the Communist line may have changed, that ultimately the Communists are still interested in world revolution?

"A. The Communists are interested in Socialism but they are interested in establishing it through the medium of the majority of action of the people.

"Q. Have they done that in any country in the world?

"A. Yes, they have.

"Q. In what country?

"A. In every country in which there is Socialism it is a Socialism supported by the majority of the people. The American path of Socialism is a path which will be determined by the American people and not be identical with the path of people in any other country.

"Q. You don't think that there will be violence as there was in every other country where Communism was established?

[fol. 28] "A. If you mean whether the Communists will instigate violence, there will not be—although that's a long way off—if any violence is to ensue in America it will be the violence perpetrated by the reactionary forces, not by the progressive forces, not by the people, and least of all by the Communists.

"Q. In other words, the only time that the Communists ever engage in violence, you say, is when other people—doesn't that sound like a pretty good excuse, though? I mean, you can always use violence and say that the other guy stirred you up to it.

"A. Well, it's as good an excuse as Abraham Lincoln used in defending the Union from the slavocracy and its attempt to overthrow the Union."

• • •

"A. Will somebody distribute it for me?

"Q. All right, Mr. Green——

"A. And this is still my favorite newspaper.

"Q. Where were you during these five years?

"A. I was in Peoplestown, U.S.A. Where Peoplestown is you will have to determine for yourself. It was north of the Rio Grande and south of the Canadian border.

"Q. But you don't want to be more specific than that?

"A. That's correct.

[fol. 29] "Q. Were you in touch with your family during these five years?

"A. I was not in touch with my family during the five years.

"Q. Have you seen Mr. Winston, the remaining fugitive, during this time?

"A. I have been on my own.

"Q. Mr. Green——

"A. It's been a warm winter, too.

"Q. Mr. Green, can you tell me this—oh, could you get out of the way—cut it. Cut it.

"Hang on for just a second. Will you fellows let us get this, please. Will you please let us get this?

"Now, yes, yes, yes. O.K, let's go.

"Go ahead. Ready. O.K.

"Q. Mr. Green——

"Ben, Ben.

"I'm sorry.

"That's all right, just a piece of recording equipment.

"Q. Mr. Green, Mr. Green—

"A. I believe that was the best way to indicate to the country that it was necessary to resist the trend of Mc-[fol. 30] Carthyism and towards world war.

"Q. Does your turning yourself in have anything to do with the New Look in Moscow?

"A. It has nothing to do with the New Look in Moscow. It has a lot to do with the New Look all over the world and the fact that the world's people have helped to bring about a state of affairs in which peace is now possible.

"Q. Well, did you give yourself up at this time because you think that it may be easier on you?

"A. No, my personal considerations were not involved at all, although I do have a great deal of confidence in the American people and in the fact that the trend which is now setting in will mature and that long before my prison term is up that the prison gates will open and there will no longer be any political prisoners in the United States.

"Q. Do you mean there is a softer feeling now towards Communism; is that what you mean?

"A. I think there is a realization of the fact that the country had been at the brink of war and at the brink of

Fascism and there is an intense desire on the part of the people to prevent this country from going over those brinks. [fol. 31] "Q. Do you expect an additional penalty for having jumped bail?

"A. You'll have to speak to Mr. Brownell on that score.

"Q. What do you intend to do when you leave this place here, I mean, walk those steps; who are you going to see?

"A. I intend to go to the United States Marshal's office.

"Q. Do you expect clemency?

"A. I expect nothing.

"Q. Would you supply information about Winston if it would lessen your sentence?

"A. If I knew where Winston was I would not tell you where he was anyway.

"Q. Have you seen him during the five years?

"A. I have been on my own.

"Q. What made you jump bail?

"A. I've tried to tell you that before. I thought that was the way by which I as an individual could do my best to help the cause for peace and democracy.

"Q. Sir, what did you do during those five years?

"A. I worked.

"Q. What did you work as?

[fol. 32] "A. I worked, political work. I just finished a very important book.

"Q. Who paid you for it?

"A. I was a man who came for dinner.

(Question not recorded on sound track.)

"A. Because I've just completed a very important book.

"Q. Mr. Green, do you think— Mr. Green, do you think it is a good policy——

"Are you O.K.?

"Mr. Green, do you think that it is a good policy to follow for people who feel that they have been unjustly treated in the courts to take the law into their own hands and jump bail?

"A. I am not ready to generalize on that. I'd say that the best kind of policy for the nation would be to live up to its own constitutional Bill of Rights and not to sentence men and women unjustly.

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[fol. 33] Mr. Abt: Yes, your Honor. Now that we have witnessed this exhibition I would move for it to be stricken, and I would like to state very briefly why.

. . . . . .

[fol. 34] The Court: Some of the comments made by Mr. Green in that picture—they are made, I think there is no dispute—would be relevant in showing that he recognized that he was evading the order of this court, and it is from that standpoint that I will receive it in evidence.

. . . . . .

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Williams: Now, if your Honor please, I propose—and you can say at the end if you stipulate to this or not—I propose to call Mr. Gabe Pressman, who is a roving reporter for WRCA-TV, who would testify that he was present on February 27th, 1956, at the foot of the steps of the United States Courthouse, and that he interviewed Mr. Green.

The Court: Is he the man in the motion picture?

Mr. Williams: He is the man in the picture. He would testify that he recognizes Mr. Green, the defendant in [fol. 35] this case, that he interviewed Mr. Green and that the following questions and answers were made either by him or by reporters in his presence of Mr. Green, and are duly recorded on this showing.

The Court: All right.

Mr. Williams: And I would like to——

The Court: Show that to Mr. Abt.

Mr. Williams: I will show it to you because there is no sense in repeating what you just heard on the screen.

Mr. Abt: I will stipulate that the witness would so testify, your Honor, and I further stipulate that the document which Mr. Williams has just handed me is a true, complete, accurate transcript of the sound track of the film we have just witnessed.

. . . . . .

[fol. 36]

. . . . . .

Mr. Abt: No objection. We will stipulate that this docu-
[fol. 37] ment is an accurate transcript of the sound track.

Mr. Williams: And that the witness Pressman heard Mr. Green make these statements?

Mr. Abt: Yes, of course.

The Court: All right. It is received in evidence then.

. . . . . .

[fol. 38]

. . . . . .

Mr. Williams: All right. I am going to call this witness to say that this paper, which is this statement which was signed "Gil Green," was received by INS on February 24, 1956, and was turned over to the FBI.

Mr. Abt: I so stipulate, Mr. Williams, and I will go beyond that, if you care to; and will stipulate that the signature that appears on the press release is the signature of Mr. Green, and it is an authentic——

Defendant Green: May I see that?

Mr. Abt: Yes. This signature is authentic.

Mr. Williams: That saves me calling a handwriting expert by the FBI who would identify this signature as the signature of Mr. Gil Green.

The Court: All right then this witness is excused.

(Witness excused.)

The Clerk: Any objection to this being received?

Mr. Abt: Your Honor, I don't like to repeat it every time. I make a continuing objection as to the relevance of these exhibits but not as to their authenticity.

[fol. 39]

. . . . . .

(Mr. Williams reads Government's Exhibit 9.)

Mr. Williams: The Government rests.

Mr. Abt: Defense rests, your Honor.

The Court: You move to dismiss?

Mr. Abt: I make a motion to dismiss.

The Court: Do you wish to argue it?

Mr. Abt: Just five minutes, maybe, your Honor.

The Court: All right. You may go ahead.

### Renewal of Motion to Vacate Show Cause Order and Denial Thereof

Mr. Abt: I move now, your Honor, to vacate the show cause order, dismiss the proceeding and discharge the defendant, first upon the grounds that I urged in my motion at the opening of the proceeding, and second upon the further grounds that the evidence fails to sustain the charge [fol. 40] contained in the order to show cause and in the specifications.

* * * * * * *

[fol. 42]

* * * * * * *

The Court: Your motion is denied and you have exceptions.

I appreciate the frank and lawyer-like way in which you have argued it, too.

### Judge's Statement and Finding of Guilt

In this case, the respondent, Gilbert Green, is ordered to show cause why he should not be held in criminal contempt of this court by reason of the fact that he knowingly and deliberately disobeyed and resisted a lawful order and command of this court, directing him to appear before it on July 2, 1951, July 3, 1951, and requiring him to surrender himself in execution of the judgment and sentence imposed under Indictment C. 128-87.

The specifications which have been served allege that the respondent wilfully, knowingly, disobeyed and resisted the order and command of this court, to wit, an order entered by the Honorable Sylvester J. Ryan, dated July 2, 1951, by failing to appear before the court, or failing to surrender to the United States Marshal on said date or at any date prior to his surrender at the United States Courthouse on February 27, 1956, on which date he did surrender.

The order of Judge Ryan, dated July 2, 1951, ordered [fol. 43] that the defendants in the case of United States of America against John B. Williams and others, including the respondent Gilbert Green, personally surrender to

the United States Marshal for the Southern District of New York in Room 318, United States Courthouse, Foley Square, New York, on the 2nd day of July, 1951 at 11:05 o'clock in the forenoon of that day.

The respondent did not surrender on that day nor did he surrender at any day thereafter until he finally apparently appeared on the courthouse steps on February 27, 1956, some four years or more after he had been ordered to appear.

The evidence introduced on this hearing shows that Mr. Sacher, the attorney for some of the defendants, advised Mr. Green that he was supposed to appear in the court on July 2, 1951. His own counsel in that case, as I understand it, Mr. Isserman, told him that he was to appear. Therefore it is very evident that he knew he was to appear, knew that he was ordered to appear, and that is borne out by the fact that in his press statement of February 23, 1956, Exhibit 9 on this hearing, he stated that "On February 27th at noon I shall cease being a fugitive," indicating that he knew that he was supposed to appear, not because of a bail bond, [fol. 44] but because of an order of this court.

And then he further said, "The course I chose five years ago was not dictated by personal considerations, that in many ways it was harder than that of imprisonment," indicating that he knew of the time that he was required to be here and that he was therefore a fugitive from an order of this court, and he knew that it was an order to appear which would require him to start serving his prison term.

The oral statements that the defendant made when he appeared on the courthouse steps to surrender on February 26 of this year, as shown in Government's Exhibit 8, indicated that he knew he had been wanted for five years. He stated that he jumped bail because he thought it was the best way he could do as an individual; that during these five years he did political work, and when asked where he was during those five years he made an answer which was obviously fanciful rather than truthful.

Under all the circumstances the Court can reach no other conclusion than that the respondent was ordered by an order of this court, signed by Judge Ryan, a duly authorized judge of this court, to surrender to the United States Mar-

shal on July 2, 1951; that he had knowledge of the order [fol. 45] that he was to surrender to the United States Marshal; that he deliberately disobeyed and resisted this lawful order and command of the court; that this deliberate and knowing disobedience to this order was a criminal contempt of this court, and that under the provisions of Section 401 of Title 18 of the United States Code, the court has power to punish by fine or imprisonment, at its discretion, a contempt of its authority such as disobedience or resistance to its lawful writ, process, order, rule, decree or command.

I find as a matter of fact that the respondent was guilty of disobedience to the lawful order of this court within the meaning of this section of the United States Code, and therefore he is guilty of the offense charged and subject to punishment by this court.

The points which have been very ably made by Mr. Green's counsel are points which have already been passed upon by the courts of this circuit and review was denied by the United States Supreme Court in the case of United States of America v. Gus Hall, whereas counsel for respondent says the facts were almost similar, except that in that case I don't believe the court had had the advantage of a motion picture of the respondent or a press release by the respondent.

[fol. 46] I find this respondent guilty as charged.

Are you ready for sentence?

* * * * * * *

[fol. 50]

* * * * * * *

I might point out that in 1951 there was at that time, when this defendant became a fugitive, there was no fugi-

[fol. 51] tive statute, so that the only way that the Court could punish for a contempt of its order was by this process, this inherent power in the Court. There is no limit of five years or any other limitation that I know of, and I think in this case your Honor should, in your discretion, impose a severe penalty for the deliberate contempt.

The Court: This defendant is under sentence of five years?

Mr. Williams: This defendant is under sentence of five years. There is one factor, he voluntarily surrendered himself. I say "voluntarily," although he surrendered himself at the same time when all the other Communists who were fugitives surrendered themselves, so it may not be voluntary on his part. But as far as the law is concerned, we did not catch him, he showed up.

The Court: How long was the period between the time that he was supposed to show up and the time when he did show up?

Mr. Williams: From July 2, 1951, to February 27, 1956, a period of about five years.

The Court: Five years. How much was the sentence for contempt in the Hall case?

[fol. 52] Mr. Williams: Three years in the Hall case and four years in the Thompson case.

The Court: Four years in the Thompson case. How long a sentence were they sentenced to after trial?

Mr. Williams: Five for Hall and three for Thompson.

Mr. Abt: Let me inquire, first, whether you have had an opportunity to read my memorandum.

The Court: I read your very able memorandum and also the memorandum submitted by Mr. Williams.

Mr. Abt: Let me then comment only very briefly, your Honor. The time, I take it, is limited. I intended to speak at greater length, but I shall not. I would like to submit, your Honor, that the question that is presented in my memorandum is both a novel one and a very serious one. It seems to me that it presents in a new aspect a part of a broader question which is, as your Honor knows, and has been the subject of frequent and very heated controversy, both on the national level and on the state level many times during our history: That is to say, the extent and scope of the power of the Court to punish for contempt.

On the one hand are the considerations of the preroga-[fol. 53] tives of the Court; on the other hand the problem presented by the fact that contempt is a summary process, the only situation known to the law, I think, your Honor, where the Court has the power to punish without an indictment or an information, without the presence of a jury.

And, as your Honor knows, because of those considerations Congress at the national level and the states at the state level have on a number of occasions severely if not drastically limited the ambit of the court's power to punish for contempt.

As your Honor has observed from my memorandum, only one case at the Federal level has ever passed upon the question that I present: that is to say, the proposition of contempt is a misdemeanor and may not be punished as a felony and hence the limit of the power of the court was to punish for one year.

That was the Creekmore case cited in the 8th Circuit back in 1916.

As I indicated in my memorandum, your Honor, I think it is plain that the case was inadequately argued and inadequately considered by the court. It was not pointed out to the court there that historically that at the time [fol. 54] of the enactment of the original judiciary act that contempts for time immemorial theretofore had been considered and punished only as a misdemeanor.

Nor was it pointed out to the court, nor did the court consider the effect of Section 402 of Title 18, which was then a part of the Clayton Act, to the effect that in a case of this character contempt should be punished in conformity with the usages of law and equity prevailing in October 1914.

As I point out in my memorandum, your Honor, the usages then prevailing in the Federal courts, or the usage then prevailing in the Federal courts, was that contempt was a misdemeanor. As of the date of the enactment of that statute no Federal Court, no case that I have found in the Federal Court, and apparently I am correct because the research of the Government has disclosed no case; no case prior to 1914, the date of the enactment of the Clayton Act that had imposed a sentence for criminal contempt in excess of a year.

And we submit that it was the intention of Congress in the enactment of what is now Section 402, to limit the power of the Federal Courts to punish criminal contempt [fol. 55] only as a misdemeanor, and had been approved both in the United States and in England theretofore.

In addition, your Honor, I think I did a thorough job on the state digests, and as I point out in my memorandum, there are only two cases, two reported cases, at least, throughout the entire history of the country, in which a state court has punished for contempt by a sentence in excess of a year.

In both of those cases, your Honor, the highest courts of the state reversed on the grounds that a contempt sentence in excess of a year, that is, a felony sentence, was beyond the power of the court.

In addition to that, your Honor, as you know, I went through all the state statutes to determine what the punishment for contempt was under state law, with the result which I summarized in the digest in my brief, that in 18 states the maximum penalty for criminal contempt was thirty days or less; in one state the maximum penalty is three months; in seven states six months; in only two states does the penalty reach to a year; in three states it [fol. 56] is made a misdemeanor; two states have general provisions; and twelve states have no provisions.

The Government says that this digest is very misleading. They say that it is misleading because of the fact that numerous contempts are also punishable under state law as crimes by longer sentences.

They point out, for example, that in New York where the maximum penalty that can be imposed for contempt is thirty days and a $250 fine; there is also a statute making bail-jumping a criminal offense and punishable by five years. That, of course, does not make the digest misleading, your Honor. The very point that I make in my brief is that the fact that the power of this court is limited in a contempt case to a misdemeanor sentence, of course, does not prevent the Government from imposing a larger sentence for what it regards as a serious offense, by making such a serious offense a crime.

What I do point out in my brief, your Honor, is that since the Legislature has that power and has exercised it as exemplified by the New York State Bail-Jumping [fol. 57] Statute, as exemplified now by the Federal Bail-Jumping Statute, that the effect for the proposition for which I argue is simply that if a sentence longer than a

year should be imposed for an act which is a contempt, it can be imposed only by making that act a crime and thus affording to the defendant his Constitutional right of indictment and a jury trial.

I suggest, your Honor, that in the whole study of the debate which from time to time has raged over the problem of contempt, that the issue that I am presenting to your Honor, that is, the question of whether a court in a contempt proceeding without indictment or information or jury trial, has limitless power to impose up to a life sentence on a defendant for any contempt of its authority, that the importance of that question transcends the fate or liberty of my client, important as the liberty of any individual is, your Honor, and presents a very serious question with reference to the administration of justice, which I submit, your Honor, should be decided in the light of the history of contempt and in the light of the Clayton Act and in the light of Section 402 and in the light of both [fol. 58] judicial and case history and legislation in the states and should be decided in favor of the proposition which I contend, that is to say, a misdemeanor, that a criminal contempt is punishable only as a misdemeanor.

The Court: You say it would not be an infamous crime?

Mr. Abt: Pardon me?

The Court: You say it would be considered as a misdemeanor and would not be an infamous crime?

Mr. Abt: It would not, your Honor, because under Title 18 misdemeanors are not punishable by penitentiary sentence, and the law is very clear, as the notes to rule 7 show, that a penitentiary sentence for a crime punishable by penitentiary sentence is an infamous crime.

I also point, as your Honor knows, in my memorandum that to hold that the court has the power to sentence a man for more than a year for criminal contempt and thus subject to him to infamous punishment raises a major constitutional question, that is to say, the question as to whether a criminal contempt is outside of the guarantee of the Fifth Amendment, that a crime involving infamous punishment must be prosecuted by indictment. And the [fol. 59] authorities are very clear, as your Honor I am sure knows, most recently in the Rumley case, that the

Court will wherever possible construe a statute or interpret a legal problem in such a manner as not to give rise to a Constitutional question of serious difficulty but to avoid that question.

And for that further reason, your Honor, in addition to everything that I have said, I would submit that it is proper, not only proper but necessary, to construe Section 401 as limiting the power of the court to punish in this type of case as in the case of a misdemeanor. Lawyers can disagree and judges can disagree with the lawyers.

The Court: Judges can disagree, too.

Mr. Abt: In the event your Honor is not persuaded, I want to add something further on the question of your discretion.

I saw Mr. Williams rise.

Mr. Williams: I wanted to advise——

The Court: Let's wait for that and let Mr. Williams answer the legal argument.

Mr. Abt: I have not concluded.

The Court: You have not concluded. I am going to hear you again.

[fol. 60] Mr. Abt: I want to conclude on the legal points by saying that I have tried to compress in an extremely brief compass what I said at greater length, and still I think not fully enough in the memorandum.

The Court: I read that with great interest. It was a very well-done brief, Mr. Abt.

Mr. Williams: Your Honor, I was simply going to remark that where the Supreme Court of the United States has so far imposed no such limitation on the power of the District Court, that this is not the type of case in which your Honor should so limit the power of the court, where from time immemorial the District Courts of the United States have had unlimited power to sentence for contempt of court, not merely for being a fugitive, but for contempt of court, if there should be any change at all it should be by a statute passed by the Congress of the United States and not by this court.

Mr. Abt: Well, my point is, of course, as your Honor knows, that a statute of the United States has been passed which does limit the power of this Court, that is to say, Section 402 of Title 18.

The Court: From time immemorial courts have had the [fol. 61] power to punish for contempt.

Mr. Abt: No question about that.

The Court: There has been no limitation in the statute that I can see that limits the extent of the punishment that can be given for contempt of court.

Now, you have raised the point which interested me very considerably, more than the discussion of the state court situation which I think is beside the case in the framework, you raised the question of whether Constitutionally if a defendant is to be sentenced for more than a year he is entitled to trial by jury, and that type of thing.

What was the situation in England at the time when the Constitution was adopted there?

Mr. Abt: The situation was, your Honor, twofold. First, that contempts were regarded as misdemeanors. And, second, if you will read Halsbury, which I cite, he says not only were they regarded as misdemeanors but that the power to proceed without indictment and a jury trial should be and was very sparingly exercised.

And indeed the situation in England was that you could proceed in contempt by an indictment and a jury trial.

[fol. 62] The Court: You could proceed, but they did proceed without them, didn't they?

Mr. Abt: They did proceed without them but imposed only sentences for misdemeanors,

The Court: When they sentenced them for a misdemeanor, was that a matter of jurisdiction or a matter of discretion?

Mr. Abt: I am afraid I do not understand you.

The Court: Was it a matter of discretion? They had the power. No English courts ever held that they could not be sentenced for more than a year for contempt, have they?

Mr. Abt: I do not know that any court has specifically so held. My research into the English law did not go that far; Halsbury and Fox say categorically that contempt is a misdemeanor. The basis for that in the English case law I am not able to enlighten your Honor on. I did not have an opportunity to go into it.

The Court: We have had a long history in this country where the Federal Courts have treated it not as a misdemeanor. There are a number of cases where they have imposed sentences greater than a year, in some cases as [fol. 63] much as three and four years.

Mr. Abt: Let me say this: There is only one Supreme Court case in which a sentence of more than a year was upheld.

The Court: That was in the Hill case. The Creekmore case that you referred to in the 8th Circuit was a year and a day.

Mr. Abt: A year and a day. There are about half a dozen or maybe eight cases, other than Hall and Thompson, in which Circuit Courts of Appeals have imposed or sustained sentences of more than a year, but in none of those cases with the single exception of the Creekmore case was the point that I am now arguing raised. And for the reason that I cite in my memorandum, I do not think the Creekmore case was well considered. So that you cannot say, your Honor, that a continuing practice of such proportions has occurred in the precedent that existed on that proposition.

In addition to which, as I point out in my memo, there was no case prior to the enactment of the Clayton Act, any reported case, in which a Federal Court had ever imposed a contempt sentence of more than a year.

[fol. 64] I would like to add just one thing.

The Court: Certainly.

Mr. Abt: Perhaps I misunderstood Mr. Williams. I understood him to say that if it were to be held that contempt is a misdemeanor and the power of the court so limited should not be held in a case of this character. If Mr. Williams by that remark was referring to the factual character of this case or, to be very plain about it, that my client is a Communist——

The Court: I gathered what Mr. Williams meant— I do not know, but I gathered, the impression made upon me was that if such a new doctrine was to be established, it should not be established by a District Court.

Mr. Williams: Not only that, your Honor, but I do mean in a case of this character where there was such a

flagrant and deliberate contempt of the Court, where a man has been out for five years; I do not care whether it is a Communist case or any other kind of a case.

Mr. Abt: I would like to reply to that, if a reply is necessary, and perhaps it isn't.

The Court: I will be glad to hear you.

[fol. 65] Mr. Abt: I would only like to say that if the law is as I contend, that is to say, that the power of this Court or of any Federal Court is limited to imposing a sentence not in excess of a year, then this court has no power in any case, be the defendant a Communist, and irrespective of the nature of the contempt, the law, I trust, is still the law.

The Court: If the law is as you state it, then the Court would not have power.

Mr. Abt: Would not have power, your Honor. And if the law of our land means anything, it means that the law is applicable to all individuals irrespective of their race or political convictions, religion or anything else, and irrespective of the character of the offense which they are alleged to have committed.

The Court: That is entirely correct, Mr. Abt.

It will be my conclusion, after giving careful consideration to the arguments that you have made and your authorities, that the Court is not limited to a sentence of a year or less in this type of case.

The United States Supreme Court has approved sentences greater than that. It has denied certiorari in cases [fol. 66] where sentences have been greater than a year. I feel that I am bound by that fact.

Mr. Abt, you have raised a very interesting point which you say was not properly presented in those cases, and of course you will have the right to present it in this case and I trust that you will. But I feel that in this case I must follow the decisions in previous cases and that I am not limited to consider this as a case that can be sentenced for less than a year.

With that understanding, are you ready for sentence?

Mr. Abt: No, not quite. I must bow to your Honor's ruling, to pursue the point elsewhere. But I do now want

to address myself to the question of your Honor's discretion.

I think, your Honor, that it must be conceded, quite apart from the question of power, that the sentences in the Hall case and in the Thompson case were of unprecedented severity, three years and four years. And all the books, including the cases that the Government cites in its memorandum today, in all of those cases, the very maximum sentence that has ever been imposed in this [fol. 67] country for criminal contempt was two years. There are only two such cases, your Honor, the Hill case and the case, the name of which I have forgotten in the 8th Circuit. So that I think we must start from that premise, your Honor, that those two sentences, as I have said, were of an unprecedented severity.

I would like to suggest, your Honor, in explanation of that that those sentences were imposed at a time of the most intense public excitement and apprehension over the question of Communism in this country. They were imposed at a time, your Honor, when I think all thinking people were extremely fearful that we might be indeed on the eve of a war between the two systems, capitalism and Communism. And I submit, your Honor, with all respect to the judiciary, that no man, be he a layman, a lawyer or a judge, can but be affected by an atmosphere of that character.

Fortunately for all of us, your Honor, today we have moved into calmer times, certainly on the international front where our own Government leaders say and tell us that tensions have relaxed, and that there is a real possi- [fol. 68] bility for a durable peace, and also domestically, your Honor, where, in my judgment, we have a chance to return to the fundamental principles of the Constitution, which were departed from in many aspects during that difficult period.

I suggest, your Honor, that that is an important factor which should and must be taken into account, as was given the unprecedented nature of the sentences in the Hall and Thompson cases.

Second, your Honor, as Mr. Williams has pointed out at the trial and again today, and as your Honor indicated at

the trial there was a matter to be considered on the question of sentence.

There is a distinction between this case and the Hall and Thompson cases. In those cases the defendants were apprehended. Here Mr. Green surrendered voluntarily. Restitution, your Honor, has always been a matter to be considered in a defendant's favor on the question of sentence. Mr. Green made restitution in the only form in which restitution can be made in a case of this character. He made restitution of himself by coming in here voluntarily and submitting to the jurisdiction of the Court.

[fol. 69] In addition to that, your Honor, as I understand a proceeding of this character, the primary purpose is to vindicate the authority of the Court. If that be its purpose, your Honor, then certainly consideration should and must be given to the fact that Mr. Green has voluntarily submitted himself now to the authority of the Court.

Further than that, your Honor, as Mr. Green said in the statement which Mr. Williams put into evidence at the time of the trial, and as I am sure is true, the punishment which he imposed on himself over these past five years is probably of a severity which cannot be matched by any sentence that any court can now impose on this defendant.

I submit, your Honor, that these are all matters which go to your discretion and should be considered in imposing sentence.

I would like to say only, finally, your Honor, that consideration of those matters and a sentence in conformity with those considerations, it seems to me today would be greeted both in this country and indeed all over the world as an evidence not of weakness but of the strength of the democratic principles which have guided and I trust will [fol. 70] continue to guide both the judiciary and the legislature and all other Governmental bodies in this country.

Mr. Williams: May I comment briefly on the question of sentence? In the Miranda case a 3-year sentence for contempt was given him by Judge Walsh in October 1954 when he refused to answer questions on cross-examination after taking the stand as a defendant. That was the Puerto Rican seditions conspiracy case.

Mr. Abt: Is that pending on appeal, Mr. Williams?

Mr. Williams: I do not know if it is still pending on appeal or not. Certiorari was denied.

Mr. Abt: The petition was. How about the contempt sentence?

Mr. Williams: I understand it was all together. In the Yates and Philips case which is cited in our memorandum the defendants got three years for contempt.

I would like to point out that with reference to Mr. Hall, who has previously been sentenced in this court, he was a fugitive for only two months and got three years for contempt.

Thompson was a fugitive for only 25 months and got 4 [fol. 71] years for contempt. Mr. Green has been a fugitive for 4½ years.

On the subject of calmer times as to this particular defendant, I do feel, your Honor, that while the times may be calmer, they are no less perilous, and this man in a very real sense, he has been convicted of a conspiracy to overthrow the Government of the United States by force and violence. He is in effect a spy, a hostile force in our midst. He is entitled to no consideration from this court. He has openly defied its order and its mandate and he came in only when he was ordered to do so by his bosses, along with the other Communist fugitives. I have absolutely no sympathy for him and I do think your Honor should impose a severe sentence, bearing in mind only the fact that he did surrender himself voluntarily.

That is the only mitigating circumstance in the whole case, and that is somewhat dulled and tarnished by the fact that he came in on orders from the Communist Party.

Mr. Abt: Your Honor, may I say just a couple of things and very briefly?

First, Mr. Williams cited the Yates case as an example [fol. 72] of a 3-year contempt sentence. As Mr. Williams knows and as his brief says, that case was reversed on appeal.

Mr. Williams: On other grounds.

Mr. Abt: On other grounds, but there is no 3-year contempt sentence in Yates case.

As I informed your Honor the other day and as I state in my brief, the contempt sentence in the Philips case is

now pending on appeal in the 9th Circuit, and the question which I earlier argued to your Honor, is pending there.

Next, your Honor, Mr. Williams again misstated, he made the same mis-statement at the time of the trial and I did not point it out then, again mis-stated the nature of the charge of the indictment in the principal case in which Mr. Green was convicted. He was not charged or convicted of conspiring to overthrow the Government, your Honor. The Smith Act statute under which he was charged and convicted was a charge of conspiring to teach and advocate the violent overthrow of the Government.

Mr. Williams has characterized, this morning, has characterized Mr. Green as a spy. Your Honor, there is no evidence to that effect in the main case. Of course, Mr. [fol. 73] Williams did not put a word of such evidence into this case. He again charged him with being a conspirator, being motivated by something, I do not know just what.

Again, your Honor, that is completely extraneous to the charge here. Mr. Williams made the same charge at the time of the trial. As your Honor knows, there was not a word of proof put into support it. And obviously those considerations, your Honor, are completely they are not considerations; they are inventions of Mr. Williams and certainly are not competent to be considered by your Honor on the question of sentence.

The Court: Have you anything to say as to why sentence should not be imposed upon you?

The Defendant: I do, your Honor. With your permission, I would like to address myself to the question of intent.

The Court: What? Intent?

The Defendant: Intent. I would like to explain the motives for my action.

It seems to me that without understanding these, nothing else is comprehensible.

. . . . . .

[fol. 74]

. . . . . .

The Court: All I am interested in is the contempt charge against you. You can talk about your motives as to the failure to surrender, if you want. We are not going to retry the original case.

The Defendant: If you bear with me, please, your Honor, for a few minutes, I think I shall indicate the relationship that one has to the other.

Furthermore, as your Honor undoubtedly knows, it is [fol. 75] no accident that in all of Anglo-Saxon jurisprudence there are only four instances in which men have been brought to court on a charge of criminal contempt for failure to surrender and in each instance the case was of one of the defendants in an original Smith Act trial. Thus there is a political undertone.

The Court: Does that mean anything? Does that mean that ordinarily a person who takes advantage of the legal systems of our Government and gets the benefit of a trial by jury and appeals, when he is convicted, he surrenders? Or does it mean that only in the case of these particular defendants that they believe that they had the right to flout the law? Is that the reason why the thing has never come up before?

The Defendant: No, sir. I would ask your Honor——

The Court: What are the motives? I would like to know what your motives were in flouting the order of the Court.

The Defendant: Do I have your permission——

The Court: Yes, provided you talk on something that is relevant, the thing you want to talk about. Go ahead. [fol. 76] The Defendant: My actions in not surrendering, my motives behind those actions, were not motivated, your Honor, by any desire to escape a cruel and unjust punishment or crime I never committed. For I have not conspired against the Government of the United States. I have not advocated force or violence. I committed no crime. I broke no law. I knew that some day I would appear here voluntarily and I hoped, fervently hoped, your Honor, that that day would soon arrive. For to me it would mean the possibility of seeing my wife and children again, even though it were through the cold steel of prison walls.

But, your Honor, it has been said that each man must act in accord with his spirit, that each man must act in accord with his conscience. To me the unjust conviction did not arise from nowhere. It did not occur in some vacuum. To me it was part of a pattern, a pattern that bode no good for America.

In 1951 this nation was engaged in a highly unpopular war in Korea. Powerful voices then were demanding an extension of that conflict across the Yalu River in China, and by the use of the atomic bomb. At home we were witnessing a trend toward political repression, which be- [fol. 77] came labeled as McCarthyism. Men in all walks of life were fearful as to what was happening to Constitutional liberties in the country.

It seemed to me at that time, your Honor, that it was necessary to act in such a way as to help alert public opinion of the nation to the perils before it; to the fact that the nation was gradually destroying the basic democratic principles from which it was founded.

There was another purpose that I had. I wanted to do what I as an individual could to help clear my own good name and the good names of my co-defendants from the false accusations brought against us. And I hope that in some small way the book which I wrote during this past period will help clear up some of the mass of confusion that exists in the mind of the public as to what the Communists aspired to and what they proposed for their country.

I am, your Honor, of course fully aware that men can honestly disagree with my estimate of the situation in 1951, or my estimate of the situation in general.

I am also fully cognizant, your Honor, that men may [fol. 78] question and honestly question the wisdom of my action, whether it served the purpose for which it was meant. But, your Honor, irrespective of whether men agree or disagree with me and my political beliefs or in my actions, yet it seems to me that what I did did not have as intent either contempt for this Court or criminality.

On the contrary, as I see it, it seems to me that the motivation was sincerely that of a patriotic effort to do what I thought was best for the people of this country.

The Court: You thought then that you could set yourself up to judge that and that your judgment was the judgment that would govern? That is hardly the democratic way of proceeding, that you were going to set yourself up as a dictator of the country. I do not think you meant that, do you?

The Defendant: No.

The Court: The democratic process, of course, is that a man is entitled to a trial, to present all his facts, entitled to an appeal, entitled to all of the benefits of the law, entitled to the voice of very able counsel such as Mr. Abt is here. But it also implies an equal responsibility of complying [fol. 79] with the law and not setting a person up as being an arbitrator dictator of what is the law. As soon as you do that, you have no more democracy in the world.

Now, I do not quite understand when you say that your motive was to protect the United States. Were you going to decide for yourself what was best for the United States? Who was deciding what was best for the United States? You?

The Defendant: No, your Honor.

The Court: Then why wasn't that just a contempt of this Court? After a long trial and after appeals all the way to the United States Supreme Court they decide that you are guilty and that you should surrender? The democractic processes were at work and you set yourself up and said, "I do not care what the democratic processes are, I am going to decide, and I won't surrender."

Isn't that what you are saying was your motive?

The Defendant: No, it is not.

. . . . . .

[fol. 87]

. . . . . .

SENTENCE

It is the sentence of the Court that you be sentenced to three years in jail, to follow the completion of your present jail sentence.

. . . . . .

[fol. 1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C 149-294

UNITED STATES OF AMERICA,

v.

HENRY WINSTON, Defendant.

**Excerpts from Stenographer's Minutes in Winston Case**

Before:

HON. ARCHIE O. DAWSON, District Judge.

New York, March 26, 1956
2.15 o'clock p.m.

APPEARANCES:

Paul W. Williams, Esq., United States Attorney, and Thomas A. Bolan, Esq., Assistant United States Attorney, for the Government.

Harry Sacher, Esq., and Edward J. Cambridge, Esq., Attorneys for Defendant.

[fol. 21]

. . . . . .

Mr. Williams: This is entitled:

NEWSPAPER RELEASE BY HENRY WINSTON

"For Immediate Release to All Newspapers.
"Announcement by Henry Winston,
"National Leader of the Communist Party.
"International News Service.
"New York"——

That is the addressee, not the address.

The Court: Is the thing dated?

Mr. Williams: It is dated at the end March 1, 1956, and it is addressed to the International News Service, New York.

"In 1948 a hastily called, hand-picked blue ribbon grand jury issued an indictment falsely charging me with having conspired to advocate the overthrow of the government by force and violence. Later a trial was held in an atmosphere charged with hysteria. I was convicted and sentenced to a five-year prison term and fined $10,000. I became an early [fol. 22] victim of the cold war.

"My conviction was a travesty of justice. It was inevitable, of course, that sooner or later the real jury of my peers—the American People—would understand that I had been convicted for my opposition to the Korean War and my efforts in defense of labor, negro and democratic rights."

May I interrupt very briefly, your Honor?

The Court: Well, just read it so that I will get the sequence of the whole thing.

Mr. Williams: (Reading)

"But whether this understanding would come before McCarthyism succeeded in completely dominating American life, or before the war-minded monopolists succeeded in plunging the nation into even graver international adventures and a new world war, was not yet determined.

"I was compelled to ask myself, as did all Americans opposed to the stampede toward world war and McCarthyism: How could I best serve the interests of the nation and help arouse its people to fight more determinedly for the Bill of Rights against those who were spreading the false gospel of inevitable war? I chose the path I did [fol. 23] as my method of struggle against a growing fascist menace. The hardships and privations that this entailed, the separation from my wife, children and friends were, understandably, difficult. But personal welfare and happiness could have meaning for me and my family only in a democratic America at peace with the world.

"What I did had precedent in American tradition. Before the Civil War under the tyranny of slavery, many negroes were compelled to become refugees. This was the fate of the great American Frederick Douglass, who so valiantly served the cause of negro emancipation and American democracy.

"In the pages of American history, the names of those responsible for the infamous Dred Scott decision of the Supreme Court have long been forgotten. But deeply enshrined in the hearts and minds of America, and in the lore of American tradition, are to be found the names of negro and white abolitionists who continued in the fight for justice regardless of temporary reactionary victories. And even today, in the face of Dixiecrat terror against the negro people, outstanding men such as the Rev. J. A. DeLine from South Carolina, have been forced to seek refuge in [fol. 24] the North.

"The charge of conspiracy against me was as false as the conspiracy charges against negro leaders in Montgomery, Alabama. In my case, it was part of reactionist efforts to McCarthyize America. And the latter ca the Dixiecrats are using it specifically to bolster the system of racism and oppression. They hope to frustrate the efforts of the negro people to attain the equality guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments. The McCarthys and Eastlands are a continuing danger to equality and freedom. They are the real conspirators against the Constitution of the United States.

"Nonetheless, since 1951 important changes have taken place. Our country and the world today are at peace. McCarthyism has been set back on its heels.

"The dark smog of hysteria and fear is clearing as fresh winds of hope circle the globe. The future for our people looks brighter.

"Reiterating my innocence, and protesting the flagrant miscarriage of justice in my case, I now enter prison with confidence that the American people will defeat the Mc-[fol. 25] Carthys and Eastlands. I am convinced they will restore the Bill of Rights to its proper place and will put an end to the Smith-McCarran and other anti-democratic laws. They will also, I am sure, now prevent the conviction as conspirators of the heroic negro men and women in Montgomery, Alabama. It will not be long before they will understand the harm of anti-communism and demand a reversal of my conviction and my complete exoneration and freedom.

"I shall appear this coming Monday, March 5th, 12:30 p.m., at the U. S. Marshal's Office in Foley Square."

Signed "Jenry Winston" and then typewritten "Henry Winston, March 1, 1956."

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[fol. 36]

• • • • • • •

EXCERPTS FROM JUDGE'S STATEMENT AND FINDING OF GUILT

There is no doubt that the defendant knew of his conviction, knew of the sentence, knew that the United States Supreme Court had affirmed the conviction and knew that [fol. 37] he was supposed to be in court and advised to be in court.

Now at that particular time the evidence introduced here or stipulated here shows that the defendant disappeared. His own attorney said he didn't know where he was.

The janitor of the house where he lived, who had seen him regularly up to that time, said he disappeared, did not know where he was; that the United States marshal searched for him and could not find him; that he did not appear in court as he had been ordered to do.

Now the only issue made by the respondent here in this hearing is that he did not know of a particular order of July 2, 1951, issued by the Hon. Sylvester J. Ryan, and on the evidence introduced on this hearing I think it has been conclusively established that the respondent did know that an order had been issued for him to appear and surrender. He knew certainly from the conversation with his counsel on the previous Friday that such an order was being prepared; he knew that he was expected to surrender himself. He voluntarily left his regular place of residence and remained in hiding for a period of almost five years; [fol. 38] it would strain credulity to say that he did that and at the same time was ignorant of the fact that an order had been entered for him to appear for surrender.

The statement issued by the respondent on March 1, 1956, which he sent to the press, announcing that he would surrender on March 5, 1956 is clear evidence that he knew that he had been ordered to appear theretofore.

In that statement he analyzed his own thinking in connection with the matter and made it clear that what he did in failing to surrender was an intentional act done by him with knowledge that it was a violation of the order of the Court.

This appears very clearly from the fourth paragraph of this statement in which he says that he chose the path he did as a method of struggle against a growing fascist menace, and that the hardships and privations that this entailed were difficult, showing that he intentionally failed to surrender, knowing that he was expected to surrender because of an order of this Court.

Under those circumstances, the Court finds as a fact that the Hon. Sylvester J. Ryan, a judge of this Court, issued [fol. 39] an order dated July 2, 1951, directing the respondent to surrender to the United States Marshal, that the respondent previously had been convicted, sentenced to a five-year prison term and fined $10,000, and his conviction had been sustained.

The Court finds as a fact that the respondent, with knowledge of the order of the Judge Ryan, absented himself, remained in hiding, and failed to comply with the order of the Court by failing to surrender to the United States Marshal; that these acts were done by the respondent deliberately, intentionally, with knowledge of the order of the Court, and that such acts were a contempt of court in that it was disobedience to a lawful order of this Court requiring the respondent to surrender to start serving his jail term.

I find the respondent guilty of the charge and specifications of the criminal contempt.

. . . . . .

[fol. 65] GOVERNMENT'S EXHIBIT NO. 1

DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C128/87

---

UNITED STATES OF AMERICA

v.

GILBERT GREEN

---

JUDGMENT AND COMMITMENT

On this 21st day of October, 1949, came the attorney for the government and the defendant appeared in person and by counsel

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully & knowingly conspiring to organize as the Communist Party of the U.S. of America a society, group and assembly of persons who teach & advocate the overthrow and destruction of the Government of the U.S. by force and violence, & knowingly & wilfully to advocate and teach the duty and necessity of so overthrowing and destroying the Government of the United States T. 18 Sec 11 & 13 USC as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE YEARS and fined $10,000. Defendant to stand committed until fine is paid or he is otherwise discharged by due course of law

~~It Is Adjudged that~~

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ J. Harold Medina,
United States District Judge

~~The Court recommends commitment to~~:[6]

(Signed) ..... (By) .....
Clerk. Deputy Clerk.

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendre," as the case may be.

[3] Insert "in count(s) number . . " if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court wishing to recommend a particular institution.

[fol. 66] *3/9/50 Recd from Deft Green $10,000—slc time in escrow*

July 6th, 1951. Fine in full Paid $10,000. PAID (FROM REGISTRY).

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§ Italicized material is handwritten notation.

[fol. 67] GOVERNMENT'S EXHIBIT NO. 2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---

UNITED STATES OF AMERICA, Appellee,

v.

EUGENE DENNIS, JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON, JOHN GATES, IRVING POTASH, GILBERT GREEN, CARL WINTER, and GUS HALL, Appellants.

---

Before: L. Hand, Swan and Frank.
Circuit Judges.

The prosecution having upon argument conceded that the appeal herein raises a "substantial question", (Rule 46 (a) (2) of the Rules of Criminal Procedure) it is

Ordered, Adjudged and Decreed that pending his appeal to this Court each of the above mentioned defendants will be released upon his posting a bond in the sum set opposite his name.

| | |
|---|---|
| Eugene Dennis | $30,000. |
| John B. Williamson | $30,000. |
| Jacob Stachel | $30,000. |
| Robert G. Thompson | $20,000. |
| Benjamin J. Davis, Jr. | $20,000. |
| Henry Winston | $20,000. |
| John Gates | $20,000. |
| Irving Potash | $30,000. |
| Gilbert Green | $20,000. |
| Carl Winter | $20,000. |
| Gus Hall | $20,000. |

L. HAND
THOMAS W. SWAN
JEROME N. FRANK,
C.J.J.

November 2, 1949

[fol. 68] GOVERNMENT'S EXHIBIT No. 3

State of New York,
County of New York, ss.:

Frederick V. Field, Robert W. Dunn, and Dr. W. Alphaeus Hunton, each being duly sworn deposes and says that each of them is a trustee named in and acting in accordance with the annexed Agreement and Deed of Trust; and that the 3 affiants herein constitute a majority of the 5 trustees named in said Agreement and Deed of Trust.

That under said Agreement and Deed of Trust the trustees purchase Bearer Bonds of the Government of the United States with monies given to them by diverse persons, and said trustees upon receipt of any and all monies issue to such persons receipts of which a true and correct copy is hereto annexed.

That the bonds this day delivered by Robert W. Dunn as collateral security for bail in the case of U. S. v. Foster et al, C-128-87 *involving Eugene Dennis, Benjamin J. Davis, Jr., John Gates, Irving Potash, Carl Winter, Jacob Stachel, Gilbert Green, Robert Thompson, John Williamson, Henry Winston and Gus Hall* are exclusively bonds purchased by the trustees with monies obtained and receipted for by them in the manner aforesaid.

That in addition to the general authroity contained in the annexed Agreement and Deed of Trust, all the trustees duly adopted a resolution at a meeting of the trustees held on July 22, 1948, reading as follows: Resolved that the trustees hereby authorize the use of the bail fund for such bail as might be required in the case of the Communist leaders indicted under the Smith Act on July 20, 1948, at all stages of the proceedings and until the case is finally terminated.

/s/ Frederick V. Field
/s/ Robert W. Dunn
/s/ W. Alphaeus Hunton

Sworn to before me
this third day of
November, 1949.

Daniel Tanenbaum

Daniel Tanenbaum
Notary Public, State of New York
No. (illegible)
Qualified in Kings County No. 227
Certs. filed (illegible)
Term Expires (illegible)

[Italicized material is handwritten addition, initialled by FVF, RWD, and WAH.]

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[fol. 69] AGREEMENT AND DEED OF TRUST

WHEREAS, the Civil Rights Congress of New York, an organization devoted to the protection of the rights of labor and of all civil rights, anticipates that in the course of the struggle of organized labor for the maintenance of living standards, and in the course of defense of civil rights in general by the Civil Rights Congress, there will be need of a Bail Fund for the benefit of strikes, and of those whose civil rights are threatened of under attack, and

Whereas, this Bail Fund, to be called the Bail Fund of the Civil Rights Congress of New York, is to consist, in part of loans and donations in cash and securities to be contributed to the General Bail Fund and Administrative Fund, in part of loans and donations of cash and securities allocated by the lenders for use in connection with specific strikes, or for the bail of specified persons, which loans and securities are intended to be thoroughly secured and safeguarded and to be employed solely and strictly for the purposes contributed or deposited, and

WHEREAS, to that end a Board of Trustees has been created, to consist of Robert W. Dunn, Frederick V. Field, Abner Green, Dashiell Hammett and W. Alphaeus Hunton, to which may be added such other person or persons as shall be deemed adviseable by the already named trustees, which Board of Trustees shall have sole and exclusive control over the Bail Fund, its administration and use, and

Whereas, the said Board of Trustees has elected from among its members, Robert W. Dunn to act as Treasurer to receive all loans and donations for deposit and investment in the name of the Board of Trustees.

THEREFORE, the Board, to insure the safety and security of the assets of the Bail Fund to its lenders and contributors, enters into this deed of trust with the treasurer:

1. The Treasurer agrees to receive all monies and securities loaned and contributed to the Bail Fund of the Civil Rights Congress of New York on behalf of the Board of Trustees of the said Fund, and promptly upon receipt thereof, to deposit same in a depository selected by the Board of Trustees and in its name,

2. The Treasurer agrees to issue to all persons lending funds to the said Bail Fund a certificate of deposit in such form as shall be approved by the Board of Trustees, which certificate of deposit shall set forth the terms and conditions upon which said monies are received and shall issue to all persons contributing funds to said Bail Fund, a receipt acknowledging said contributions, which receipt shall likewise be in a form to be approved by the said Board of Trustees.

3. The Board of Trustees thereon agrees to accept said sums and securities and thereupon to employ all monies and securities in its possession for the purposes contributed, and generally to utilize the assets of the funds to carry out the objects and intentions of the Bail Fund of the Civil Rights Congress of New York as provided for by, and under the resolutions of the Board of Trustees and the regulations adopted by it, governing the administration of the Fund, which regulations shall be consistent with the general purposes of the fund as set forth herein.

4. The Board of Trustees agrees to make provision to have bail posted in such a manner and pursuant to such regulations as it may deem fit to adopt, consistent with the general purposes of the Fund.

5. The Board of Trustees also agrees to repay all loans to the general Bail Fund upon thirty days notice in writing and to repay all loans allocated to a specific strike as soon

as possible after the termination of such strike, and to repay all loans made for bail for a specific named individual as soon as that bail is released by the courts, provided, however, that repayment of such loans shall not be made in such a manner as to imperil the safety of any individual for whom bail has been posted.

[fol. 70] 6. The Board of Trustees shall not be obligated to pay interest on any loans so received, but also agrees that there shall not be deducted from any sums so received as loans any monies on account of administrative disbursements in connection with the operation of the Fund.

7. Upon the liquidation of the Fund and return of all monies loaned to the lenders thereof, or sooner if in the opinion of the Trustees the repayment of any such loans shall not be imperilled, the Board of Trustees agrees to deliver all surplus funds received by the Board of Trustees as contributions, and not as loans, to the Civil Rights Congress of New york, to be used by the Civil Rights Congress of New York for its general purrposes.

8. This deed of Trust and Agreement may be signed by the Trustees on the original or any duplicate thereof with the same force and effect as if all signatures appeared on the same copy.

In witness whereof, this Deed of Trust, originally dated September 16, 1946, and as amended September 26, 1949, has been signed by the Treasurer and the Trustees of the Bail Fund of the Civil Rights Congress of New York, this 26th day of September, 1949.

.....
Treasurer

.....
Trustee

.....
Trustee

.....
Trustee

.....
Trustee

/s/ Abner Green
Trustee

NO. 354

(P. 5-1)

CASH CERTIFICATE NUMBER C 5375

DATE

RECEIVED FROM

ADDRESS

CITY STATE

RECEIVED BY

BAIL FUND of the CIVIL RIGHTS CONGRESS of NEW YORK

205 EAST 42 STREET, ROOM 1613, NEW YORK 17, N. Y.

CASH CERTIFICATE NUMBER C 5375

# Certificate of Deposit

Receipt is hereby acknowledged this day of , 194 , of the sum of

received from

of

by the Board of Trustees of the Bail Fund of the Civil Rights Congress of New York, for the uses and purposes of said Bail Fund upon the following terms and conditions:

1 *Said moneys shall be employed only for the purpose of posting bail for defendants in cases involving violation of civil rights, and the Trustees of the Bail Fund shall have sole authority, under the regulations and resolutions adopted by the Board of Trustees, to determine for whom bail shall be posted.*

2 *Said moneys shall be repaid to the lender without interest upon 30 days notice in writing, providing, however, that repayment of loans shall not be made in such a manner as to imperil the safety of any individual for whom such moneys may have been posted as bail, and the Trustees shall have sole authority to determine whether such peril exists; and provided further that the 30 days of notice may be waived by the Trustees to permit immediate return of any loan.*

3 *That the depositor shall at the time that he applies for the return of the moneys loaned by him to the said Board of Trustees, accompany his application with this Certificate of Deposit and that no money shall be returned except upon surrender of this Certificate of Deposit.*

DATED: NEW YORK, N. Y., , 19

Treasurer

TRUSTEES: Dashiell Hammett, Chairman Abner Green
Frederick V. Field, Secretary Dr. W. Alphaeus Hunton
Robert W. Dunn, Treasurer Milton Wolff, Counsel

Assistant Treasurer

*Not good unless signed by Treasurer and countersigned by Assistant Treasurer.*

[fol. 72] AGREEMENT AND DEED OF TRUST

WHEREAS, the Civil Rights Congress of New York, an organization devoted to the protection of the rights of labor and of all civil rights, anticipates that in the course of the struggle of organized labor for the maintenance of living standards, and in the course of defense of civil rights in general by the Civil Rights Congress, there will be need of a Bail Fund for the benefit of strikes, and of those whose civil rights are threatened or under attack, and

Whereas, this Bail Fund, to be called the Bail Fund of the Civil Rights Congress of New York, is to consist, in part of loans and donations in cash and securities to be contributed to the General Bail Fund and Administrative Fund, in part of loans and donations of cash and securities allocated by the lenders for use in connection with specific strikes, or for the bail of specified persons, which loans and securities are intended to be thoroughly secured and safeguarded and to be employed solely and strictly for the purposes contributed or deposited, and

WHEREAS, to that end a Board of Trustees has been created, to consist of Robert W. Dunn, Frederick V. Field, Abner Green, Dashiell Hammett and W. Alphaeus Hunton, to which may be added such other person or persons as shall be deemed adviseable by the already named trustees, which Board of Trustees shall have sole and exclusive control over the Bail Fund, its administration and use, and

Whereas, the said Board of Trustees has elected from among its members, Robert W. Dunn to act as Treasurer to receive all loans and donations for deposit and investment in the name of the Board of Trustees.

THEREFORE, the Board, to insure the safety and security of the assets of the Bail Fund to its lenders and contributors, enters into this deed of trust with the treasurer:

1. The Treasurer agrees to receive all monies and securities loaned and contributed to the Bail Fund of the Civil

Rights Congress of New York on behalf of the Board of Trustees of the said Fund, and promptly upon receipt thereof, to deposit same in a depository selected by the Board of Trustees and in its name.

2. The Treasurer agrees to issue to all persons lending funds to the said Bail Fund a certificate of deposit in such form as shall be approved by the Board of Trustees, which certificate of deposit shall set forth the terms and conditions upon which said monies are received and shall issue to all persons contributing funds to said Bail Fund, a receipt acknowledging said contributions, which receipt shall likewise be in a form to be approved by the said Board of Trustees.

3. The Board of Trustees thereon agrees to accept said sums and securities and thereupon to employ all monies and securities in its possession for the purposes contributed, and generally to utilize the assets of the funds to carry out the objects and intentions of the Bail Fund of the Civil Rights Congress of New York as provided for by and under the resolutions of the Board of Trustees and the regulations adopted by it, governing the administration of the Fund, which regulations shall be consistent with the general purposes of the fund as set forth herein.

4. The Board of Trustees agrees to make provision to have bail posted in such a manner and pursuant to such regulations as it may deem fit to adopt, consistent with the general purposes of the Fund.

5. The Board of Trustees also agrees to repay all loans to the general Bail Fund upon thirty days notice in writing and to repay all loans allocated to a specific strike as soon as possible after the termination of such strike, and to repay all loans made for bail for a specific named individual as soon as that bail is released by the courts, provided, however, that repayment of such loans shall not be made in such a manner as to imperil the safety of any individual for whom bail has been posted.

[fol. 73] 6. The Board of Trustees shall not be obligated to pay interest on any loans so received, but also agrees that there shall not be deducted from any sums so received

as loans any monies on account of administrative disbursements in connection with the operation of the Fund.

7. Upon the liquidation of the Fund and return of all monies loaned to the lenders thereof, or sooner if in the opinion of the Trustees the repayment of any such loans shall not be imperilled, the Board of Trustees agrees to deliver all surplus funds received by the Board of Trustees as contributions, and not as loans, to the Civil Rights Congress of New York, to be used by the Civil Rights Congress of New York for its general purposes.

8.
This deed of Trust and Agreement may be signed by the Trustees on the original or any duplicate thereof with the same force and effect as if all signatures appeared on the same copy.

IN WITNESS WHEREOF, this Deed of Trust, originally dated September 16, 1946, and as amended September 26, 1949, has been signed by the Treasurer and the Trustees of the Bail Fund of the Civil Rights Congress of New York, this 26th day of September, 1949.

/s/ Robert W. Dunn
Treasurer

/s/ W. A. Hunton
Trustee

/s/ Frederick V. Field
Trustee

/s/ Dashiell Hammett
Trustee

/s/ Robert W. Dunn
Trustee

_____

Trustee

[fol. 74] United States of America,
Southern District of New York, ss.:

BE IT REMEMBERED, that on this 3rd day of November in the year of our Lord one thousand nine hundred and forty nine before me ~~George J. M. Follmer~~, Clerk of the District Court of the United States for the Southern District of New York, in the Second Circuit, personally came GILBERT GREEN of No. 806 S. Independence Blvd., Chicago, Illinois—4578 42nd St Queens principal, and Robert W. Dunn of No. 80 East 11th St., New York City surety, and severally acknowledged themselves to owe to the United States of America, that is to say, the said GILBERT GREEN the sum of Twenty Thousand ($20,000) Dollars, and the said Robert W. Dunn the sum of Twenty Thousand ($20,000) dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the conditions following, to wit:

WHEREAS, lately, on the 21st day of October, 1949 in the District Court of the United States for the Southern District of New York, in a cause pending in said District Court between the United States of America and GILBERT GREEN, defendant, a judgment and sentence was rendered against the said GILBERT GREEN and the said GILBERT GREEN filed an appeal in the United States ~~Circuit~~ Court of Appeals for the Second Circuit to reverse the judgment and sentence imposed against him, and

WHEREAS bail was fixed in the sum of Twenty Thousand ($20,000) Dollars pending the disposition of said appeal.

Now, the conditions of this recognizance are such, that if the said GILBERT GREEN shall appear either in person or by attorney in the United States ~~Circuit~~ Court of Appeals for the Second Circuit when said cause is reached for argument or when required by law or rule of said United States ~~Circuit~~ Court of Appeals and from day to day thereafter in said United States ~~Circuit~~ Court of Appeals until said cause is finally disposed of, and shall abide by and obey all orders made in said cause and shall surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of the United

States for the Southern District of New York may direct, if the judgment and sentence appealed from shall be affirmed, and shall appear before the District Court of the United States for the Southern District of New York on such day or days as ahll be sent for a retrial of said case, provided the judgment of the District Court of the United States for the Southern District of New York is reversed by the said United States ~~Circuit~~ Court of Appeals; and shall not depart the jurisdiction of the District Court of the United States for the Southern District of New York without leave, then this recognizance to be void, otherwise to remain in full force, virtue and effect.

And we, the undersigned Principal and Surety, do hereby STIPULATE, AGREE, AND CONSENT, that in case the aforesaid Recognizance shall be forfeited judgment may be entered for the sum set forth in said Recognizance, and that execution issue thereon according to law.

/s/ Gilbert Green
Principal.

/s/ Robert W. Dunn
Surety.

Acknowledged before me the day and year first above written.

Clerk, U.S.District Court,
Southern District of New York.

Edward Wm. Donald
U. S. Commissioner
Southern District of New York

[fol. 76] GOVERNMENT'S EXHIBIT No. 5

120-2 N/S Clerk's Signature (Gen'l)

JBK:EJA-c

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C 128-87

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UNITED STATES OF AMERICA

—v—

JOHN B. WILLIAMSON, HENRY WINSTON, CARL WINTER, JOHN GATES, JACOB STACHEL, EUGENE DENNIS, BENJAMIN J. DAVIS, JR., ROBERT G. THOMPSON, IRVING POTASH, GILBERT GREEN, GUS HALL, Defendants.

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NOTICE OF SETTLEMENT

SIR:

PLEASE TAKE NOTICE that the within Order on Mandate will be presented for settlement and signature to the Clerk of the United States District Court at his office in the U. S. Court House, Foley Square, Borough of Manhattan, City of New York, on the 2nd day of July 1951, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard.

Dated: New York, N. Y. July 1951.

Yours, etc.,

IRVING H. SAYPOL,
United States Attorney,
Southern District of New York.
Attorney for United States.
Office & P. O. Address:
U. S. Court House,
Foley Square,
Borough of Manhattan,
City of New York.

To:

Abraham Isserman,
401 Broadway, Room 1602,
Attorney for John B. Williamson
and Gilbert Green.

[fol. 77] Louis McCabe,
401 Broadway, N.Y.,City
Attorney for Henry Winston

George Crockett,
401 Broadway, N.Y.City,
Attorney for Carl Winter
and Jacob Stacher

Harry Sacher,
401 Broadway, N.Y.City,
Attorney for John Gates and
Irving Potash

Richard Gladstein or
Max M. Kaufman,
401 Broadway,
Attorney for Robert G. Thompson
and Gus Hall

David M. Freedman
(Unger, Freedman & Fleischer)
~~100 Fifth Ave.~~, N.Y.City.
11 Park Place

Eugene Dennis, pro se,
420 West 119th St., N.Y.City

Benjamin J. Davis, Jr., pro se,
1 West 126th St., N.Y.City

[fol. 78] JBK:FJA:c

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C 128-87

UNITED STATES OF AMERICA

—v—

JOHN B. WILLIAMSON, HENRY WINSTON, CARL WINTER, JOHN GATES, JACOB STACHEL, EUGENE DENNIS, BENJAMIN J. DAVIS, JR., ROBERT G. THOMPSON, IRVING POTASH, GILBERT GREEN, GUS HALL, Defendants.

ORDER ON MANDATE

A judgment of conviction and sentence having been entered herein against the above named defendants and an appeal from said judgment having been taken to the United States Court of Appeals for the Second Circuit, and the said United States Court of Appeals having affirmed said judgment and certiorari having been granted by the Supreme Court of the United States, and the Supreme Court of the United States having filed its mandate herein on 2nd day of July, 1951, affirming the judgment of the United States Court of Appeals for the Second Circuit and remanding the case to this Court for further proceedings in conformity with its opinion,

Now, on motion of IRVING H. SAYPOL, United States Attorney for the Southern District of New York, it is hereby

ORDERED, ADJUDGED and DECREED that the mandate of the Supreme Court of the United States be and the same hereby is made the order and judgment of this Court, and it is [fol. 79] FURTHER ORDERED, ADJUDGED and DECREED that the defendants personally surrender to the United States Marshal for the Southern District of New York; in Room 318, United States Court House, Foley Square, New York,

N.Y., on the 2nd day of July, 1951, at 11.05 o'clock in the forenoon of that day.

Dated: New York, N.Y., July 2 1951.

/s/ Sylvester J. Ryan
U. S. D. J.

---

[fol. 80] June 28th, 1951.

Original
Admissions of Service.

Copy Received.

| *Defendants.* | *Attorneys.* |
|---|---|
| John B. Williamson, | /s/ A J Isserman per HS. |
| Henry Winston, | /s/ Louis F McCabe per HS. |
| Carl Winter, | /s/ Geo. W Crockett Jr. per HS. |
| John Gates, | /s/ Harry Sacher |
| Jacob Stachel, | /s/ Geo. W Crockett Jr. per H.S. |
| Eugene Dennis, | |
| Benjamin J. Davis, Jr. | |
| Robert G. Thompson, | /s/ Richard Gladstein per HS. |
| Irving Potash, | /s/ Harry Sacher |
| Gilbert Green, | /s/ A J Isserman per HS. |
| Gus Hall, | /s/ Richard Gladstein per HS |
| | /s/ David M. Freedman per A V. |

6/28/51
6 P. M.

[fol. 81] Civil Dkt.—Aff. Personal Service

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C128-87 App. 4-265

---

UNITED STATES OF AMERICA

vs.

EUGENE DENNIS

---

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK.

Edward O'Brien being duly sworn, deposes and says that he is employed in the office of IRVING H. SAYPOL, United States Attorney for the Southern District of New York, attorney for the Appellee herein.

That on the 28th day of June 1951, he did serve a true copy of the hereto annexed Order on Mandate on EUGENE DENNIS, by leaving a true copy of the same under door of Apt. 61, at 420 W. 119 St. New York, N.Y., there being no one present who was authorized to give an admission of service.

/s/ Edward O'Brien

Sworn to before me this
29th day of June 1951.

/s/ Daniel Tanenbaum

DANIEL TANENBAUM
Notary Public, State of New York
No. (Illegible)
Qualified in Kings County
Certified with Kings & N. Y. Co. Clerks
Term expires March 30, 195

[fol. 82] Civil Dkt.—Aff. Personal Service

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C128-87 App. 4-265

---

UNITED STATES OF AMERICA

vs.

BENJAMIN J. DAVIS, JR.

---

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK.

Edward O'Brien being duly sworn, deposes and says that he is employed in the office of IRVING H. SAYPOL, United States Attorney for the Southern District of New York, attorney for the Appellee herein.

That on the 28th day of June 1951, he did serve a true copy of the hereto annexed Order on Mandate on Benjamin J. Davis, by leaving a true copy of the same under door of Apt. 3 B, at #1 West 126 St., New York, N. Y. there being no one present who was authorized to give an admission of service.

/s/ Edward O'Brien

Sworn to before me this
29th day of June 1951.

/s/ Daniel Tanenbaum

DANIEL TANENBAUM
Notary Public, State of New York
No. (Illegible)
Qualified in Kings County
Certified with Kings & N. Y. Co. Clerks
Term expires March 30, 195

[fol. 82] GOVERNMENT'S EXHIBIT 6

IHS:FA
110925

Bench Warrant

TO THE MARSHAL OF THE UNITED STATES,

for the Southern District of New York, or any other United States Marshal or authorized officer, and to his deputies, or any or either of them.

WHEREAS, at a District Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held at the Borough of Manhattan, in the City of New York, within and for the District and Circuit aforesaid, on the 20th day of July in the year of our Lord one thousand nine hundred and forty-eight the Grand Jurors in and for the said District and Circuit, brought into the said Court a true Bill of Indictment against Gilbert Green for having, on the 1st day of April 1945 at the Southern District of New York and within the jurisdiction of this court did unlawfully conspired to organize the Communist Party to advocate the overthrow and destroy the Government of the United States by force and violence in violation Ti.18 Sec.10 USC Ti.18 Sec.11 and 13 USC commonly known as the Smith Act.

as by said Indictment, now remaining on file and of record in the said Court, may more fully appear; to which Indictment the said Gilbert Green has pleaded Not Guilty and been convicted on October 14, 1949 and on October 21, 1949 the said defendant having been sentenced to be imprisoned for a term of five years and to pay a fine of $10,000 to stand committed until fine is paid or he is otherwise discharged according to law and the United States Supreme Court having filed its mandate on July 2, 1951, affirming judgment of the District Court.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to appre-

[fol. 84] hend the said Gilbert Green and him bring before the said Court, at the U. S. Court House Building, in the City of New York and surrender him to the United States Marshal for commitment.

WITNESS; the HON. John C. Knox Judge of the District Court of the United States, for the Southern District of New York, at the Borough of Manhattan, in the City of New York, the 2nd day of July in the year of our Lord one thousand nine hundred and fifty-one.

IRVING H. SAYPOL
U. S. Attorney.

WILLIAM V. CONNELL
Clerk.

[SEAL]

A TRUE COPY OF A WARRANT ISSUED

William V. Connell
Clerk.

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[fol. 85] GOVERNMENT'S EXHIBIT 9

FOR IMMEDIATE RELEASE February 23, 1956

Attention: *Editor*

STATEMENT OF GIL GREEN, COMMUNIST LEADER

On Monday, February 27th at 12 noon I shall cease being a fugitive from injustice and instead become its prisoner. At that time, I shall appear at Foley Square.

The reason I am taking this step is that the main trend of the nation is no longer toward a new world war and McCarthyism. A new trend is evident. This is true even if our discredited Secretary of State still brags about bringing the country repeatedly to the brink of war and our modern Cotton Mathers still pursue their witch-hunts.

New political winds are blowing. These give hope that the curtain of fear behind which democratic liberties were undermined and destroyed will be lifted. They also give reason for confidence that the day is not far off when the

political rights of Communists will be restored and men and women of differing political persuasions will be able, once again, to debate their views openly and freely in the public arena.

The course I chose five years ago was not dictated by personal considerations. In many ways it was harsher than that of imprisonment. It meant added hardship and suffering both for myself and my family. It entailed not only cruel separation, but the greater agony of complete severance from loved ones.

And yet, so long as there was a grave danger that this country would be dragged into a senseless world slaughter and toward an American brand of fascism, it seemed incumbent upon me to resist that trend with every ounce of strength I possessed. Some could do so by going to jail; others by not.

Before the steel doors of political bigotry clang shut behind me I am filing my own political brief before the highest court in the land—the court of public opinion. This is in the form of the manuscript of a book which I have just completed and am forwarding to possible publishers under the title *The Enemy Forgotten*. In this I endeavor to explain why it is that the American people—essentially progressive-minded—permitted our land to be taken down the hated road of repression and how the nation can be brought back to the path of progress.

I enter prison with head high and conscience clear. I have committed no crime against any of my fellow men or against my country. I know that the day will come when all America will recognize this to be true. I am also convinced that the day will come when prison doors swing open, for there will be no "cold war" and, therefore, no "cold war" political prisoners.

s/ Gil Green

[fol. 86] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C 128-87

C 149-268

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UNITED STATES OF AMERICA, Petitioner,

v.

GILBERT GREEN, Respondent.

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APPEARANCES:

Paul W. Williams, United States Attorney for the Southern District of New York
Attorney for Petitioner
Thomas A. Bolan, Assistant U.S. Attorney
Of Counsel

John J. Abt, of New York, N.Y.
Attorney for Respondent

OPINION—April 16, 1956

DAWSON, *D.J.*:

This proceeding was brought on by an order to show cause duly served upon the respondent directing him to show cause why he should not be adjudged and held in criminal contempt of this Court by reason of the fact that he knowingly and deliberately disobeyed and resisted a lawful order and command of this Court directing him to appear before it on July 2, 1951 and July 3, 1951 for surrender in execution of the judgment and sentence imposed under indictment C 128-87.

Respondent was convicted in this Court, after a long trial before Judge Medina, of conspiring to teach and [fol. 87] advocate the overthrow of the government by force and violence, 18 U.S.C.A. §2385, and pending appeal from his conviction, was ordered released on bail. The conviction was sustained by the Court of Appeals, 183 F. 2d 201, and on June 4, 1951, the Supreme Court affirmed his con-

viction. *Dennis* v. *United States*, 341 U.S. 494. A proposed order on mandate requiring his appearance for surrender to the United States Marshal on July 2, 1951 was served upon his counsel on June 28, 1951. Respondent did not appear on July 2, 1951, and attempts thereafter to execute a bench warrant at his stated address failed.

Respondent was arraigned and pleaded not guilty to the charge of contempt, and the issues were tried by the Court without a jury pursuant to Federal Rules of Criminal Procedure, Rule 42.

The evidence showed that the order of Judge Ryan of July 2, 1951 required the respondent to surrender personally to the United States Marshal for the Southern District of New York. There is no doubt that respondent did not surrender for over four years, or not until February 27, 1956 when he surrendered himself for commitment at the United States Courthouse in New York, N. Y.

The evidence was sufficient to establish, beyond a reasonable doubt, that the respondent knowingly disobeyed the order of Judge Ryan. The evidence showed that Mr. Sacher, an attorney in the case, personally advised the respondent on June 29th that he had to be in Court on July 2, 1951. There was other evidence that thereafter, but before July 2, respondent left his New York City [fol. 88] address and was not seen there again. There was further evidence that several days before respondent surrendered, he issued a written statement to the press admittedly signed by him which conclusively established that he had remained in hiding in order to avoid serving the sentence to which he had been committed. Furthermore, on the day on which he surrendered, respondent made statements to the reporters who were present on the Courthouse steps which also conclusively established that he had knowingly and willfully absented himself so as to avoid serving a sentence which he knew had been imposed upon him.

From the testimony, the Court found as a fact that respondent had notice of the order and willfully disobeyed it. See *United States* v. *Gus Hall*, 198 F. 2d 726 (C.A. 2, 1952), cert. den. 345 U.S. 905 (1953).

Respondent then contended that the Court was without power to impose a sentence for contempt of Court of more

than one year, and this opinion deals primarily with that question.

§401 of 18 U.S.C. provides that

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> • • •
>
> (3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

It is the argument of the respondent that this provision is not a grant of unlimited power to the Court, but that the [fol. 89] discretion of the Court is confined to punishment for a misdemeanor, as defined in §1 of Tit. 18 U.S.C., i.e., a crime punishable by imprisonment for not more than one year. Respondent argues that at Common Law, contempt was considered to be a misdemeanor; and that if §401 is construed to authorize the punishment of contempt by a term of more than one year, it would violate that provision of the Fifth Amendment to the United States Constitution which provides that:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

This argument presupposes that criminal contempt is an "infamous crime" within the meaning of those words as used in the Fifth Amendment.

While, for certain purposes, contempt cases may be considered criminal cases, it has been well established that "proceedings in contempt may be said to be sui generis". *O'Neal* v. *United States*, 190 U.S. 36 (1903).* The Court of Appeals for the Eighth Circuit in a case which raised the point now urged by the respondent decided that a criminal contempt is an "offense" and that the sentence imposed might exceed a year in the penitentiary. *Creekmore* v. *United States*, 237 F. 743 (1916).

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* See to same effect *Bowdon* v. *Bowdon*, 278 S. W. 2d 670 (Sup. Ct. Tenn. 1955).

The argument that the English courts at the time of the adoption of the original Judiciary Act of 1789 considered criminal contempts as misdemeanors is not persuasive. In [fol. 90] those days, many crimes which were considered misdemeanors were punished by sentences much more severe than one year in the penitentiary. In fact, in those days, the fact that a crime was a felony implied in law that it was punishable by capital punishment even if the statute prescribed no penalty. Blackstone, *Commentaries on the Laws of England* (1765-9) Vol. IV, p. 98. Consequently, characterization of an offense as a misdemeanor meant merely that it was not punishable by capital punishment and not, as respondent contends, that it was punishable by imprisonment of no more than one year. Blackstone, with reference to the punishment for contempt, states as follows:

> "If he confesses the contempt, the court will proceed to correct him by fine or imprisonment, or both, and sometimes by a corporal or *infamous* punishment." Vol. IV, p. 287 (emphasis added).

The respondent argues that by virtue of the Common Law, a criminal contempt is a misdemeanor and hence is not punishable by a sentence of more than one year under 18 U.S.C. §1. This argument involves a misapprehension of §1. This section does not state that if a crime is a misdemeanor it may not be punished by a sentence of in excess of one year. Rather, the section provides the reverse, that if the allowable punishment is one year or less, the crime is a misdemeanor. Thus, it is the penalty which governs the classification and not any characterization or classification given by the Common Law or by a statute which governs the penalty. *Ex parte Brede*, 279 F. 147, 149 (E.D.N.Y. 1922), aff'd 263 U.S. 4 (1923).

[fol. 91] The point urged by respondent depends not so much upon the penalty which might be imposed but rather upon the question as to whether contempt was at the time of the framing of the Constitution considered as that type of "infamous crime" which at Common Law was triable by a jury.

While it has been said by distinguished authors that up to 1720, cases of contempt in England, when committed not

in the presence of the Court or by persons officially connected with the Court, were tried by a jury, there is no indication that this procedure was followed after 1720.*

Blackstone, whose *Commentaries* probably did much to influence the thinking of American lawyers at and before the time of the framing of the Federal Constitution, pointed out that:

> "A power, therefore, in the supreme courts of justice, to suppress such contempts by an immediate attachment of the offender results from the first principles of judicial establishments, and must be an inseparable attendant upon every superior tribunal." (Vol. IV, p. 286)

That contempts, insofar as punishment is concerned, were sui generis and were not "infamous crimes" within the meaning of the Fifth Amendment has been recognized over the past century and a half. As early as 1812, the Supreme Court of the United States pointed out that the United States Courts had no Common Law jurisdiction in criminal cases, and that their jurisdiction must, in each [fol. 92] case, depend upon a statute, except that the power to fine or imprison for contempt is a power which necessarily resides in the courts of justice from the nature of their institution and does not depend upon statute. *The United States* v. *Hudson and Goodwin*, VII Cranch 32 (1812). In 1811, the Court for the Trial of Impeachments and the Correction of Errors of the State of New York held:

> "A contempt is an offense against the court, as an organ of public justice; and the court can rightfully punish it on summary conviction, whether the same be punishable as a crime or misdemeanor, on indictment, or not." *Yates* v. *Lansing*, 9 Johns. 395, 417 (1811).

Cooley in *Constitutional Limitations* (8th Ed. 1927), p. 668, Note 2, states:

> "The power to punish contempts summarily is incident to courts of record, and the courts have generally held

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* "*Power of Congress over Procedure in Criminal Contempts*", Frankfurter and Landis, 37 Harv. L. Rev. 1010 at 1042 (1924).

that cases of contempt are not triable by jury. The objects of the power would be defeated in many cases if they were."

The power to punish for contempt is not controlled by the Constitution as to modes of accusation and methods of trial. *In re Michael*, 146 F. 2d 627 (C.A. 3, 1944), rev'd on other grounds 326 U.S. 224 (1945). A Court in enforcing obedience to its orders by proceedings for contempt "is not executing the criminal laws of the land" nor in such a proceeding is there "any invasion of the constitutional right of trial by jury". *In re Debs*, 158 U.S. 564, 594, 596 (1895); see *United States* v. *United Mine Workers*, 330 U.S. 258 at p. 298 (1947).

Whether the right of trial by jury for criminal contempt should be granted by appropriate amendment to the stat [fol. 93] ute or rule is a matter which appropriately may be argued. *"Contempt of Court, Criminal and Civil"*, Joseph H. Beale, Jr., 21 Harv. L. Rev. 161 (1908); *"Civil and Criminal Contempt in the Federal Courts"*, 57 Yale L. Journal 83 (1947).

However, no such argument was made by the respondent. He limited his argument solely to the extent of the sentence. Such sentence, it has been established, rests solely in the sound discretion of the Court, subject only to the Constitutional provision against cruel and unusual punishment. *United States* v. *Lederer*, 140 F. 2d 136 (C.A. 7, 1944). Thus, in *Hill* v. *United States ex rel. Weiner*, 300 U.S. 105 (1937) a two-year sentence was affirmed; in *Conley* v. *United States*, 59 F. 2d 929 (C.A. 8, 1932), a two year sentence was affirmed; in *United States* v. *Hall*, 198 F. 2d 726 (C.A. 2, 1952), cert. den. 345 U.S. 905, a three year sentence was affirmed; in *United States* v. *Thompson*, 214 F. 2d 545 (C.A. 2, 1954), a four-year sentence was affirmed.

In the exercise of the discretion residing in the Court, the respondent has been sentenced to three years in the penitentiary following the completion of the five-year sentence which was originally imposed upon him.

Dated: New York, N.Y.
April 16, 1956

Archie O. Dawson, U.S.D.J.

[fol. 94] UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C 149/268

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UNITED STATES OF AMERICA

v.

GILBERT GREEN

---

JUDGMENT AND COMMITMENT—March 26, 1956

On this 26th day of March, 1956 came the attorney for the government and the defendant appeared in person and[1] by counsel

IT IS ADJUDGED that the defendant has been convicted upon[2] the Court adjudging him guilty of contempt of Court after trial, by reason of the fact that he disobeyed and resisted lawful orders and commands of this Court directing him to appear before it on July 2, 1951 as charged[3] and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] Three Years

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be

[3] Insert "in count(s) number " if required

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and,

Sentence to be served consecutively to and begin after service of sentence he is presently serving on Cr 128 87

Writ Satisfied.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Archie O. Dawson, United States District Judge

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if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

* Enter any order with respect to suspension and probation.

* For use of Court wishing to recommend a particular institution.

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[fol. 95] United States Court of Appeals
For the Second Circuit

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Nos. 45 and 46—October Term, 1956.
(Argued January 17, 1957.)
Docket Nos. 24103, 24104

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The United States of America, Petitioner-Appellee,

v.

Gilbert Green, Respondent-Appellant.

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The United States of America, Petitioner-Appellee,

v.

Henry Winston, Respondent-Appellant.

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Opinion—February 11, 1957

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Before: Hand, Hincks and Waterman, Circuit Judges.

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Appeals from Judgments of the District Court for the Southern District of New York (Dawson, *J.*, presiding), sentencing the appellants to three years imprisonment for criminal contempt.

[fol. 96] JOHN J. ABT, for the Appellants.
THOMAS A. BOLAN, for the Appellee.

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HAND, Circuit Judge:

The appellants, Green and Winston, appeal from sentences of three years imprisonment under the following circumstances. Each was one of a number of defendants convicted of a violation of §2385 of Title 18, U. S. C., commonly known as the "Smith Act," after a long trial which ended on October 14, 1949; we affirmed the judgment on August 1, 1950, and the Supreme Court did the same on June 4, 1951. On the mandate of the Supreme Court's affirmance an order issued out of the District Court, directing all the defendants to appear for surrender to the marshal on July 2, 1951, and on June 28 it was served upon the attorney for the appellants who had both been released on bail pending the appeals. They did not appear on the return day, and successfully evaded arrest until they eventually surrendered, Green in February 1956 and Winston in March. These proceedings to punish them for disobedience of the order of June 28, 1951, were begun against them before Judge Dawson, who after a hearing without a jury on March 26, 1956, sentenced each to a term of three years, cumulatively upon the original sentence of five years. Upon these appeals, which involve the same questions and may be decided together, three questions arise: (1) Whether the District Court has power to impose any sentence of more than one year for disobedience of its orders; (2) whether it had any power whatever to sentence these particular appellants for failure to surrender in response to the order of June 28, 1951; and (3) whether there was evidence enough to fix them with notice of that order before their surrender. Believing that our decisions in *United States* v. *Hall*, 198 F. 2d 726 and *United States* v. *Thompson*, [fol. 97] 214 F. 2d 545, foreclose our consideration of the second and third questions, the appellants do not press them here, explicitly reserving, nevertheless, the right to do so should the cases come before the Supreme Court. Although in these two decisions we affirmed sentences of three and four years, we will assume, *arguendo*, that the first point, unlike the second and third, remains open.

The following is the first of the appellants' two arguments in support of the position that the sentences for more than one year were invalid. The Supreme Court definitively held in *Ex parte Wilson*, 114 U. S. 417, 429, that "a crime punishable by imprisonment for a term of years at hard labor is an infamous crime"; and it is no longer necessary that the feature of "hard labor" be added, if the confinement may be in a penitentiary. *Mackin* v. *United States*, 117 U. S. 348, 352; *In re Claasen*, 140 U. S. 200, 205. The punishment for any crime punishable by a sentence of more than a year, may be by confinement in a penitentiary (§4083, Title 18, U. S. C.); and it follows that a sentence for disobedience of a court order may not be for more than a year, for in that event it is an "infamous crime," and must be prosecuted by indictment under the Fifth Amendment.

Concededly, this argument depends upon whether such disobedience is a "crime" within the meaning of the Fifth Amendment. In a civil action ordinarily the proceeding is only remedial and imprisonment is imposed only to coerce compliance;* but it may also be punitive, provided its penal character be clearly enough disclosed from the outset.** Moreover, that is true *a fortiori* when the order, as here, issues as a step ancillary to a criminal prosecution. *Gompers* v. *United States*, 233 U. S. 604, 610, was a civil [fol. 98] action in which the imprisonment for disobedience was purely punitive, and Holmes, *J.*, speaking for the court used the following language:

> "It does not follow that contempts of the class under consideration are not crimes, or rather, in the language of the statute, offenses, because trial by jury as it has been worked out and fought out has been thought not to extend to them as a matter of constitutional right. These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in

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* *United States* v. *Baird* (C. A. 2), February 4, 1957.

** *In re Kahn*, 204 F. 581 (C. A. 2); *In re Guzzardi*, 74 F. 2d 671 (C. A. 2); *McCann* v. *New York Stock Exchange*, 80 F. 2d 211 (C. A. 2).

> English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure, * * * and that at least in England it seems that they still may be and preferably are tried in that way."

Nevertheless, in spite of this statement there has been much confusion in the language used by the courts to describe criminal contempts; for certainly they have not consistently been called "crimes." Apparently by reason of faulty history, it became the prevailing belief about the end of the 18th Century that disobedience of court orders might be treated summarily without a jury, which would not have been possible had the Sixth Amendment applied to it. In any event so much has become well settled;* and the resulting confusion was enough to provoke Chief Justice Vinson, then speaking for the Court of Appeals of the District of Columbia, to say: "we see no advantage in rehashing the discussions on whether criminal contempt is sui generis," [which had been a favorite [fol. 99] evasion], "offense, crime or felony. Criminal contempts are criminal contempts; some of the procedural and substantive law applied to criminal contempts is as though they were crimes, and some of it is not." **

Nevertheless, confused as the thinking no doubt has been one thing seems certain: it would be anomalous to hold that when the punishment for disobedience is more than a year, the proceeding must be begun by an indictment, and yet that it need not be tried to a jury. It would be even more unwarranted to make the right to a jury depend upon whether the imprisonment is more than a year; for the Sixth Amendment covers all "criminal prosecutions," except those for "petty offenses." † Perhaps all the decisions have been wrong that have held that disobedience may be so tried; but, if so, we may not overrule them; and indeed, when Congress in 1954 enacted §3146 of Title 18 it expressly declared: "Nothing in this section shall inter-

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* *Eilenbecker* v. *Plymouth County*, 134 U. S. 31, 38; *In re Debs*, 158 U. S. 564, 596; *Myers* v. *United States*, 264 U. S. 95, 113; *United States* v. *United Mine Workers*, 330 U. S. 258, 296.

** *Warring* v. *Huff*, 122 F. 2d 641.

† Section 1(3), Title 18, U. S. C.

fere with or prevent the exercise by any court of the United States of its power to punish for contempt." That was a recognition of the power as it had then developed.

The appellants' second point is that in any event §24 of the Clayton Act limited the permissible imprisonment for criminal contempts to a year. This argument runs as follows. Before 1914 there was no recorded decision of any sentence of more than a year for a criminal contempt, though there had been extremely large fines. That section was one of three—21, 22 and 24—the first two of which provided for the trial for disobedience of orders or judgments when "the act or thing" was a "criminal offense under any statute of the United States, or under the laws of any State in which the act was committed." The trial must then be to a jury. Section 24 provided that although §§21 [fol. 100] and 22 should apply to such contempts, "all other cases of contempt * * * may be punished in conformity to the usages at law and in equity now prevailing." This remained unchanged until the Act of 1948, when this passage, then a part of the last paragraph of §402, Title 18, was changed to read: "may be punished in conformity to the prevailing usages at law." Although there had been decisions between 1914 and 1948 (this argument continues), in which courts had affirmed sentences longer than one year, these were mistakes, because §24 by incorporating into the statute the usages then "prevailing," forbad longer sentences. Moreover, the change in 1948 from "usages at law and in equity now prevailing" to "prevailing usages at law" is not to be understood to indicate any change in the scope of the statute, for it was the declared purpose of the Revisers not to change its "meaning or substance."

This reasoning also does not convince us. There is no reason to suppose, because courts had not up to 1914 imposed imprisonment for more than a year, that they thought they had not the power to do so. There would have been no basis for such a conclusion except the constitutional argument that we have just held invalid, and there is not in the books a syllable of recognition of any such supposed limitation. The "usages now prevailing" meant practices that the courts for one reason or another thought controlling, not limitations that, so far as appears, they thought

the particular occasion demanded on the merits. The language of 401 has always been in substance as it reads now: a "court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority," etc. The phrase "at its discretion," does not mean that the court must choose between fine and imprisonment; the word "or," itself provides as much and the words, if so construed, would have been redundant. The term of imprisonment is to be as much in the court's [fol. 101] discretion as the fine. Besides, whatever may have been the longest sentence up to 1914, certainly during the ensuing period of 34 years up to 1948, in at least four instances sentences of more than a year were affirmed for the very reason that the length of imprisonment was to be determined at the court's "discretion." * The same is true of four decisions of courts of appeals after 1948, all of which, like the four earlier ones, declared, though briefly and without discussion, that the court's discretion had not been abused.**.

Thus there has been an unbroken line of authority contrary to the proposition that 4 24 put a year's limit upon the imprisonment. Moreover, by the Act of 1954, of which we have spoken, Congress provided that a person who was admitted to bail, and who failed to appear, became subject to imprisonment for five years, when tried to a jury, if the charge on which he was bailed was a felony; but for only one year, if the charge was a misdemeanor. Therefore, if the court's summary power is limited to one year's imprisonment in the case of felonies, the result is that, when the defendant is charged with a felony and "jumps bail," he may be imprisoned for five times as long if he is tried to a jury as he can be, if he is tried to a judge; but when he is charged with a misdemeanor, it makes no difference whether he is tried to judge or jury. It is hard enough to see why the maximum punishment for the same offence

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* *Creekmore* v. *United States*, 237 F. 743 (C. C. A. 8); *Conley* v. *United States*, 59 F. 2d 929 (C. A. 8); *Warring* v. *Huff*, *supra* (122 F. 2d 641 (C. A. D. C.); *United States* v. *Lederer*, 140 F. 2d 136, 139 (C. A. 7).

** *United States* v. *Hall*, *supra*; *United States* v. *Thompson*, *supra*; *Nilva* v. *United States*, 227 F. 2d 74 (C. A. 8); *Lopiparo* v. *United States*, 216 F. 2d 87 (C. A. 8).

should depend upon the mode of trial; but it is impossible to suppose that so great a disparity should have been in [fol. 102] tended when the offender was charged with "jumping bail" in a prosecution for felony, but that no disparity whatever should have been intended when he did the same in a prosecution for a misdemeanor. Moreover, the Senate Report (U. S. Code Congressional and Administrative News, 1954, Vol. II, p. 3074) declares that the "proposed legislation seeks to create a statutory deterrent which will minimize the possibility of bail forfeiture"; and it is extremely unlikely that so great an increase as five to one would not have been mentioned, if it had been supposed that the existing maximum in felonies was only a year.

Finally, in view of this statute, especially directed as it is against this particular kind of disobedience, we cannot hold that three years was an abuse of discretion, when we remember that in *United States* v. *Hall*, *supra* (198 F. 2d 726) and *United States* v. *Thompson*, *supra* (214 F. 2d 545), we sustained as long, or longer, sentences.

We do not see that either Criminal Rule Seven or Rule Forty-two, needs any discussion, if what we have said is true.

Judgments affirmed.

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[fol. 103] UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, Petitioner-Appellee,

v.

GILBERT GREEN, Respondent-Appellant.

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JUDGMENT—February 11, 1957

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk

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[fol. 104] United States Court of Appeals
For the Second Circuit

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United States of America, Plaintiff-Appellee,

v.

Henry Winston, Defendant-Appellant.

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Judgment—February 11, 1957

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro, Clerk

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[fol. 105] Clerk's Certificate to Foregoing Transcript
(omitted in printing)

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[fol. 106] Supreme Court of the United States

Order Allowing Certiorari—Filed May 27, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.